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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: EAST PALESTINE ) CASE NO.  
5 TRAIN DERAILMENT ) 4:23-CV-00242-BYP  
6 ) JUDGE BENITA Y. PEARSON

7 TUESDAY, JANUARY 16, 2024

8 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

9 - - -

10 Videotaped deposition of Charles  
11 Day, held at the offices of Wilmer Cutler  
12 Pickering Hale and Dorr LLP, 2100 Pennsylvania  
13 Avenue NW, Washington, DC, commencing at  
14 9:03 a.m. Eastern, on the above date, before  
15 Carrie A. Campbell, Registered Diplomate  
16 Reporter, Certified Realtime Reporter,  
17 Illinois, California & Texas Certified  
18 Shorthand Reporter, Missouri, Kansas,  
19 Louisiana & New Jersey Certified Court  
20 Reporter.

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1 VIDEOGRAPHER: We are now on  
2 the record. My name is Daniel  
3 Holmstock. I am the videographer for  
4 Golkow Litigation Services.

5 Today's date is January 16,  
6 2024. The time on the video screen is  
7 9:03 a.m.

8 This deposition is being held  
9 at the address of 2100 Pennsylvania  
10 Avenue Northwest in Washington, DC, in  
11 the matter of In Re: East Palestine  
12 Train Derailment, pending before the  
13 United States District Court for the  
14 Northern District of Ohio, Eastern  
15 Division.

16 Our deponent today is  
17 Mr. Charles Day.

18 Counsel, your appearances will  
19 be noted on the stenographic record.

20 Our court reporter is Carrie  
21 Campbell, who will now administer the  
22 oath to the witness.

23  
24 CHARLES DAY,  
25 of lawful age, having been first duly sworn



1 to tell the truth, the whole truth and  
2 nothing but the truth, deposes and says on  
3 behalf of the Plaintiffs, as follows:  
4

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. GOMEZ:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Can you please state and spell  
10 your name for the record?

11 A. Charles Day, D-a-y.

12 Q. And, Mr. Day, you're currently  
13 employed by Specialized Response Solutions.

14 Correct?

15 A. Yes, sir.

16 Q. And you are a senior project  
17 manager?

18 A. Yes, sir.

19 Q. Were you a senior project  
20 manager in February of 2023 at Specialized  
21 Response Solutions?

22 A. Yes, sir.

23 Q. Shorthand for Specialized  
24 Response Solutions is SRS.

25 Right?

1 A. Yes. Yes.

2 Q. So I'm going to use SRS  
3 throughout the remainder of the day.

4 Okay?

5 A. I want you to use the whole  
6 thing.

7 Q. That'll be too much for me.  
8 I'm sorry.

9 But we can agree SRS means  
10 Specialized Response Solutions.

11 Right?

12 A. Yes, sir.

13 Q. Okay. Am I correct that you  
14 have a bachelor's of science in occupational  
15 health and safety?

16 A. Yes, sir.

17 Q. And from what institution did  
18 you receive that degree?

19 A. Columbia Southern University.

20 Q. In what year?

21 A. 2015? '16? One of those two.

22 Q. And as part of obtaining that  
23 degree in occupational health and safety,  
24 what, if any, courses in chemistry did you  
25 take?

1           A.       I didn't take any chemistry  
2   classes in that class.

3           Q.       Okay. So no chemistry classes  
4   while at -- was it Columbia?

5           A.       Southern.

6           Q.       Columbia Southern.  
7                    Correct?

8           A.       Yes, sir.

9           Q.       You also attended at some point  
10   in your career firefighter academy.

11                   Correct?

12          A.       Several, yes, sir.

13          Q.       Okay. What was the first  
14   firefighter academy that you attended?

15          A.       Tarrant County Junior College,  
16   right after I graduated in 1981.

17          Q.       Okay. And thereafter, what's  
18   the next firefighter academy you had?

19          A.       City of Arlington fire  
20   department recruit class of 1983.

21          Q.       Okay. Other than those two  
22   academies, were there additional firefighting  
23   academies?

24          A.       There's a lot of firefighting  
25   classes, yes, sir.

1 Q. Okay. I'm just talking about  
2 like academies or schools specifically.

3 Any others?

4 A. Texas A&M. Illinois State fire  
5 college. There's a lot of them over  
6 41 years.

7 Q. Understood.

8 Just focusing on the first two  
9 institutions that you mentioned --

10 A. Yes, sir.

11 Q. -- did you receive HAZMAT  
12 training?

13 A. Yes, sir.

14 Q. And as part of that HAZMAT  
15 training, did you receive education in  
16 chemistry?

17 A. It was discussed. It was --  
18 there were classes about chemistry, yes.

19 Q. Those chemistry classes, did  
20 they include specific instruction on vinyl  
21 chloride monomer?

22 A. In the fire classes, no.

23 Q. I'm going to be using the  
24 phrase, as I'm sure you can guess, "vinyl  
25 chloride monomer" a lot today.

1 A. Yes.

2 Q. Can we agree that that's  
3 abbreviated to VCM?

4 A. VCM, yes, sir.

5 Q. Okay. Other than the bachelor  
6 of science that we discussed, do you have any  
7 other formal, post-high school education?

8 A. No, sir.

9 Q. Other than what we've  
10 discussed, do you have any other formal  
11 education in chemistry?

12 A. No, sir.

13 Q. Other than what we've  
14 discussed, do you have any formal instruction  
15 in chemistry?

16 A. No, sir.

17 Q. You do not consider yourself to  
18 be a chemist.

19 Correct?

20 A. That is correct.

21 Q. You do not consider yourself to  
22 be a chemical engineer.

23 Correct?

24 A. That is correct.

25 Q. And you don't consider yourself

1 to be a material scientist.

2 Right?

3 A. That is correct.

4 Q. So you would agree with me that  
5 you are not an expert in VCM.

6 Correct?

7 MR. LEVINE: Objection.

8 THE WITNESS: I have a lot of  
9 experience dealing with vinyl chloride  
10 in containers and in plants and in  
11 transportation.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Let me ask the question a  
14 little differently.

15 You'd agree with me that you're  
16 not an expert in the chemical properties of  
17 VCM.

18 Correct?

19 A. Correct.

20 Q. You'd agree with me that you're  
21 not an expert in the reactivity of VCM?

22 A. That's correct.

23 Q. You'd agree with me that you're  
24 not an expert in the polymerization of VCM?

25 A. That's correct.

1           Q.       You mentioned a number of  
2       schools beyond the two -- and forgive me,  
3       I've forgotten them already -- that you've  
4       attended for firefighting and HAZMAT  
5       training.

6                       Right?

7           A.       Yes, sir.

8           Q.       And I believe you actually  
9       produced in response to a subpoena a large  
10      number of certificates and other  
11      documentation reflecting that you've done  
12      training at these establishments.

13                    Do you recall producing those?

14          A.       Yes, sir.

15          Q.       I think there were over 200  
16      different certificates. I'm just going to  
17      call them certificates.

18                    Does that sound about right?

19          A.       Yes, sir.

20          Q.       And those spanned, if I recall  
21      correctly, from 1997 up through pretty much  
22      the present.

23          A.       I don't remember when they  
24      started. I had a lot of certificates.

25          Q.       Fair enough.

1 But I think 1997 sounds about  
2 when you started firefighter academy.

3 Is that right?

4 A. No, sir.

5 Q. When was that again?

6 A. 1981.

7 MR. LEVINE: Can we take one  
8 break? I realized I'm not mic'ed up  
9 to be able to make my objections.

10 VIDEOGRAPHER: Stand by. The  
11 time is 9:09 a.m. we're going off the  
12 record.

13 (Off the record at 9:09 a.m.)

14 VIDEOGRAPHER: The time is  
15 9:11 a.m., and we're back on the  
16 record.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Mr. Day, before we took a quick  
19 break, you corrected me that your firefighter  
20 training began in 1981.

21 A. My firefighter training began  
22 in actually -- probably in the '70s.

23 Q. Okay.

24 A. But I graduated in '81 and went  
25 to recruit class at TCJC.



1 Q. Okay. Understood.

2 From 1981 to the present,  
3 you've attended a number of continuing  
4 education and refresher courses in  
5 firefighting.

6 Right?

7 A. Yes, sir.

8 Q. And some of those classes also  
9 entailed HAZMAT.

10 Right?

11 A. Most classes did, yes, sir.

12 Q. Some of the institutions that  
13 provided those refreshers and training  
14 include OSHA.

15 Right?

16 A. Yes, sir.

17 Q. Another one is CHLOREP.

18 Is that correct?

19 A. Yes, sir.

20 Q. What does CHLOREP stand for?

21 A. It's the -- it's a division of  
22 The Chlorine Institute. It's the -- a trade  
23 organization for chlorine manufacturers, and  
24 they cover all things that -- mission  
25 chemicals of chlorine production.

1 Q. Is SRS a member of CHLOREP?

2 A. We're an associate member.

3 Q. And just briefly, what's an  
4 associate member?

5 A. We're not a voting member, but  
6 we attend training. We attend conferences  
7 and such.

8 Q. So you participate in CHLOREP  
9 trainings and meetings, things of that  
10 nature?

11 A. Yes, sir.

12 Q. You also attended refreshers  
13 and education that was put on by a group with  
14 the abbreviation is SERTC.

15 Is that correct?

16 A. Yes, sir.

17 Q. And what does SERTC stand for?

18 A. SERTC is the -- basically it's  
19 the old Transportation Technology Center at  
20 Pueblo, Colorado, that teaches emergency  
21 response for rail and highway accidents and  
22 incidents.

23 Q. Is that sometimes in shorthand  
24 referred to as "going out to Pueblo" or  
25 "training in Pueblo"?

1 A. Pueblo, yes, sir.

2 Q. Okay. I also saw in some of  
3 those certificates and other documents  
4 references to tank car specialist.

5 Are you familiar with that  
6 phrase?

7 A. Yes, sir.

8 Q. Can you just describe for me  
9 what that means?

10 A. Basically it's somebody that  
11 knows containers, that knows the construction  
12 of them and how to handle them when they're  
13 involved in incidents and accidents and have  
14 leaks.

15 Q. And you've since -- certainly  
16 since 1981 have attended a number of  
17 refreshers and continuing education specific  
18 to tank cars.

19 Correct?

20 A. Yes, sir.

21 Q. Throughout that period, let's  
22 say from 1981 to the present, which of these  
23 various trainings and refreshers do you  
24 recall providing specific instruction on  
25 vinyl chloride monomer polymerization?

1           A.       The classes that we put on are  
2 not -- don't focus solely on polymerization  
3 of VCM. It's more of how to deal with  
4 compressed flammable gases in emergency  
5 response situations.

6           Q.       Do you recall from any of the  
7 trainings and refreshers during that period,  
8 1981 to the present, any of them providing  
9 specific instruction on the polymerization of  
10 VCM?

11          A.       Yes, sir.

12                   MR. BRAGA: Object to the form  
13 of the question.

14 QUESTIONS BY MR. GOMEZ:

15          Q.       Which trainings are those or  
16 were those?

17          A.       A lot of the classes briefly  
18 touch on polymerization of VCM and other  
19 polymer material.

20          Q.       And you said that they briefly  
21 touch upon it.

22                   What kind of areas do they  
23 cover with respect to VCM polymerization?

24          A.       What happens to inhibitors when  
25 exposed to elevated heat, high pressure and

1 such.

2 Q. Okay. And when you're  
3 referencing inhibitors, that's in connection  
4 with the transportation of stabilized VCM in  
5 a railcar, for example.

6 Right?

7 A. All materials, yes, sir.

8 Q. And again, you mentioned  
9 inhibitors. That's a method for stabilizing  
10 VCM for transportation.

11 Right?

12 A. That is correct.

13 Q. Oxygen purging is another way  
14 of stabilizing VCM for transportation.

15 Correct?

16 A. That is correct.

17 Q. Those are distinct methods for  
18 stabilizing VCM for transportation.

19 Correct?

20 A. That's correct.

21 Q. Would you agree with me, based  
22 off of your training, that both of those  
23 methods neutralize the initiators needed to  
24 start the polymerization reaction in VCM?

25 MR. BRAGA: Objection to the

1 form of the question.

2 MR. LEVINE: And same  
3 objection.

4 THE WITNESS: Yes, sir.

5 QUESTIONS BY MR. GOMEZ:

6 Q. An inhibitor is actually added  
7 to the VCM to stop the reaction from  
8 occurring.

9 Right?

10 A. Stabilizes the materials, yes,  
11 sir.

12 Q. And an inhibitor can include a  
13 variety of chemicals. One of them, I think,  
14 is phenol?

15 A. Yes, sir.

16 Q. Whereas oxygen purging removes  
17 oxygen from the vessel so that there is not a  
18 catalyst or initiator for the VCM to start  
19 polymerizing.

20 Right?

21 MR. LEVINE: Objection.

22 MR. BRAGA: Same objection.

23 THE WITNESS: Yes, sir.

24 MR. GOMEZ: Just before we go  
25 any further, in past depositions we've

1           agreed that one objection is an  
2           objection for all.

3                   MR. BRAGA:    Okay.

4                   MR. GOMEZ:    I'm happy to agree  
5           to that as well.

6                   MR. LEVINE:   Let's do that.

7   QUESTIONS BY MR. GOMEZ:

8           Q.       You mentioned in connection  
9   with inhibitors that you received training, I  
10   think, specifically about how heat interacts  
11   with those inhibitors?

12           A.       Yes, sir.

13           Q.       Do I remember that correctly?

14           A.       Yes, sir.

15           Q.       When VCM is -- when stabilized  
16   VCM is shipped with an inhibitor, is it your  
17   understanding that heating can lead to the  
18   loss of the inhibitor?

19           A.       Yes, sir.

20           Q.       And correct me if I'm wrong,  
21   it's not well-understood exactly how those  
22   inhibitors get lost, but experience shows  
23   that when there's heating and VCM, the  
24   inhibitors tend to go away over time.

25                   Right?

1 MR. BRAGA: Object.

2 THE WITNESS: Yes, sir.

3 QUESTIONS BY MR. GOMEZ:

4 Q. That's not the case when there  
5 is stabilization of VCM via oxygen purging.

6 Right?

7 MR. LEVINE: Objection.

8 THE WITNESS: It can be, yes,  
9 sir.

10 QUESTIONS BY MR. GOMEZ:

11 Q. How can it be?

12 MR. LEVINE: Same objection.

13 THE WITNESS: Anytime that you  
14 stabilize something, inhibit  
15 something, elevated heat and extreme  
16 pressure can change things at a  
17 molecular level.

18 QUESTIONS BY MR. GOMEZ:

19 Q. So is it your understanding  
20 that when we're talking about oxygen purged,  
21 stabilization for VCM, the application of  
22 heat changes something within the vessel that  
23 detracts from the ability to stop the  
24 polymerization reaction?

25 A. It has the ability, it's my



1 understanding, yes, sir.

2 Q. And which of your trainings or  
3 educations or refreshers from 1981  
4 specifically gave you that information with  
5 respect to oxygen stabilized VCM?

6 MR. BRAGA: Object to the form  
7 of the question.

8 THE WITNESS: There's -- there  
9 was a lot of training between 1981 and  
10 the present, and I can't specifically  
11 tell you which class said that. But  
12 basically in emergency response,  
13 stabilized mat -- we have a book of  
14 experience that tells us we need to --  
15 that we need to deal with certain  
16 materials certain ways.

17 And VCM is a stabilized  
18 product, and you have the ability to  
19 generate polymer during that -- during  
20 heating, elevated heating.

21 QUESTIONS BY MR. GOMEZ:

22 Q. So I appreciate that, but my  
23 question is specific to trainings that you  
24 recall about the polymerization of  
25 oxygen-stabilized VCM and the loss of

1 inhibiting properties.

2 Do you recall any specific  
3 trainings from 1981 to the present that  
4 discussed that topic?

5 A. No, sir.

6 Q. From 1981 to the present, do  
7 you remember any instructors who provided  
8 information or education or training about  
9 the loss of inhibitors in oxygen-stabilized  
10 VCM?

11 A. No, sir.

12 MR. BRAGA: Object to the form  
13 of the question.

14 But go ahead, you can answer.

15 THE WITNESS: No, sir.

16 QUESTIONS BY MR. GOMEZ:

17 Q. You mentioned a book of  
18 experience. I take it that's not a literal  
19 book of experiences.

20 Right?

21 A. That's correct.

22 Q. It's the collective memory and  
23 experience of those in the HAZMAT industry.

24 Fair?

25 A. That's correct.

1 Q. And based off of that  
2 collective experience, various instructors  
3 provide information and insight at, among  
4 other things, these trainings that we're  
5 talking about.

6 Right?

7 A. Yes, sir.

8 Q. Do you recall any discussion  
9 from any trainings from 1981 to the present  
10 about specific experiences involving the  
11 polymerization of oxygen-stabilized VCM?

12 A. Can you restate the question?

13 Q. Sure.

14 From 1981 to the present, do  
15 you recall any of the trainings or refresher  
16 courses discussing real-life experiences  
17 where oxygen-stabilized VCM polymerized?

18 MR. LEVINE: Objection.

19 THE WITNESS: The training  
20 classes, we don't break down VCM into  
21 oxygen-stabilized or inhibited VCM.  
22 We deal with it as all stabilized VCM.

23 QUESTIONS BY MR. GOMEZ:

24 Q. But you agree with me that  
25 those are chemically different ways of

1 stopping the reaction.

2 Correct?

3 MR. LEVINE: Objection.

4 THE WITNESS: Yes, sir.

5 QUESTIONS BY MR. GOMEZ:

6 Q. And you'd agree with me that  
7 it's important to understand which way VCM is  
8 being stabilized when dealing with a HAZMAT  
9 situation involving that chemical.

10 Correct?

11 MR. BRAGA: Object to the form  
12 of the question.

13 THE WITNESS: Yes, sir.

14 QUESTIONS BY MR. GOMEZ:

15 Q. In your experience in the field  
16 responding to HAZMAT situations, can you  
17 describe for me the instances where you  
18 personally have dealt with a derailed railcar  
19 containing VCM?

20 A. I have dozens of incidents  
21 involving vinyl chloride.

22 Q. Okay.

23 A. So you have to be specific on  
24 what -- which one you want.

25 Q. Fair enough.

1                   Let's start with the number.

2    You said dozens.

3                   Would you say more or less than  
4    50?

5           A.       Less than 50.

6           Q.       More or less than 25?

7           A.       Probably more.

8           Q.       So somewhere between 25 and 50.  
9                   Fair?

10          A.       Sure.

11          Q.       Of those 25 to 50 situations  
12   involving derailed VCM cars, how many of  
13   those presented a concern for polymerization  
14   of VCM?

15          A.       It's always a concern because  
16   it is a stabilizer-inhibited product, so  
17   there's always a heightened level of concern  
18   when we're dealing with vinyl chloride.

19          Q.       Let me ask the question  
20   differently.

21                   Of those 25 to 50 incidents  
22   involving VCM, how many of those -- in how  
23   many of those was the polymerization and  
24   potential explosion of the VCM-containing  
25   vessel the primary concern?

1 MR. BRAGA: Object to the form  
2 of the question.

3 THE WITNESS: There was one in  
4 1982.

5 QUESTIONS BY MR. GOMEZ:

6 Q. 1982. That would be the  
7 Livingston, Louisiana, incident.

8 Right?

9 A. Correct.

10 Q. In the Livingston, Louisiana,  
11 incident in 1982, was the VCM in the railcars  
12 stabilized?

13 A. I was a technician in 1982, so  
14 I do not know.

15 Q. You didn't come to learn at any  
16 point after that whether it was stabilized or  
17 not?

18 A. I don't recall.

19 Q. When you say you were a  
20 technician in 1982, just can you describe for  
21 me what that means, what those duties were?

22 A. I was a laborer.

23 Q. Okay. Doing what specifically  
24 in connection with the -- that derailment, if  
25 anything?

1 A. Working as directed.

2 Q. And who were you working for?

3 A. Western Emergency Service.

4 Q. And as far as the Livingston  
5 derailment, what services -- what specific  
6 emergency services was Western Emergency  
7 Services providing in connection with that  
8 incident?

9 A. We were a response team that  
10 assisted in cleanup operations.

11 Q. Transitioning from our  
12 discussion of inhibitors to a little bit more  
13 detail on oxygen-stabilized VCM, are you  
14 familiar with the process that shippers  
15 employ to achieve oxygen stabilization of  
16 VCM?

17 MR. LEVINE: Objection.

18 THE WITNESS: Yes, sir.

19 QUESTIONS BY MR. GOMEZ:

20 Q. And in that process, one of the  
21 first things that they do is they take in the  
22 railcar and they take an oxygen reading.

23 Right?

24 A. Yes, sir.

25 Q. And specifically they're

1 looking to see if the level of oxygen within  
2 the railcar is less than 200 parts per  
3 billion.

4 Right?

5 MR. BRAGA: Object.

6 THE WITNESS: Okay.

7 QUESTIONS BY MR. GOMEZ:

8 Q. And depending on that reading,  
9 they either begin loading the VCM or pump  
10 nitrogen into the railcar to purge the oxygen  
11 from the railcar.

12 Right?

13 A. Yes, sir.

14 MR. LEVINE: Objection.

15 QUESTIONS BY MR. GOMEZ:

16 Q. And once they've achieved the  
17 desired threshold of oxygen, they then go  
18 ahead and they load the VCM into the railcar.

19 Right?

20 MR. BRAGA: Objection.

21 THE WITNESS: Okay.

22 QUESTIONS BY MR. GOMEZ:

23 Q. I'm asking.

24 Do you know?

25 A. I'm guessing they do.



1 Q. And they then check it again  
2 for oxygen concentration.

3 Right?

4 MR. LEVINE: Objection.

5 THE WITNESS: Okay.

6 QUESTIONS BY MR. GOMEZ:

7 Q. Have you ever seen a VCM  
8 railcar loaded?

9 A. Yes, sir.

10 Q. It's a closed system.

11 Correct?

12 A. That's correct.

13 Q. So if oxygen is purged from the  
14 railcar, VCM is then loaded, there's no way  
15 for anything to get into the railcar  
16 unintentionally, assuming the system stays  
17 closed.

18 Right?

19 MR. BRAGA: Object.

20 THE WITNESS: That is correct.

21 QUESTIONS BY MR. GOMEZ:

22 Q. So if they've done it  
23 correctly, the end result of this whole  
24 closed loading system is that you have  
25 99.9 percent pure VCM.

1 Right?

2 A. As long as --

3 MR. LEVINE: Objection.

4 THE WITNESS: As long as the  
5 system is purged, yes.

6 QUESTIONS BY MR. GOMEZ:

7 Q. As long as the system is purged  
8 and as long as there's no breaches in the  
9 closed system.

10 Right?

11 A. That is correct.

12 Q. We talked a little bit about  
13 training, and you mentioned, I think, at one  
14 point that some of the discussions involve  
15 monomers and the polymerization of monomers,  
16 at least generally or as a class of  
17 chemicals.

18 Is that right?

19 A. Yes, sir.

20 Q. Another chemical that is  
21 discussed in these trainings and refreshers  
22 is styrene.

23 Right?

24 A. Yes, sir.

25 Q. Do you have personal experience

1     responding to derailments where styrene is a  
2     chemical of concern?

3             A.       Yes, sir.

4             Q.       Styrene is a polymerizable  
5     monomer.

6                     Right?

7             A.       That is correct.

8             Q.       Styrene is capable of  
9     polymerizing just by the application of heat.

10                    Right?

11                   MR. BRAGA:  Objection.

12                   THE WITNESS:  It can.

13     QUESTIONS BY MR. GOMEZ:

14             Q.       And that's something that you  
15     were taught or instructed on in the trainings  
16     we discussed earlier?

17             A.       Yes, sir.

18                   MR. BRAGA:  Objection.

19     QUESTIONS BY MR. GOMEZ:

20             Q.       Another chemical that I think  
21     I've seen mentioned in some of the documents  
22     is butadiene?

23             A.       Excuse me?

24             Q.       Butadiene?

25             A.       Butadiene, yes, sir.

1 Q. And do you have any personal  
2 experience responding to derailments where  
3 butadiene was the chemical of concern?

4 A. Butadiene, yes, sir.

5 Q. I neglected to ask.

6 In connection with styrene, can  
7 you estimate again for me how many incidents  
8 you've been involved in personally where  
9 styrene was the chemical of concern?

10 MR. LEVINE: Objection.

11 THE WITNESS: I can't recall.

12 A lot.

13 QUESTIONS BY MR. GOMEZ:

14 Q. Roughly the same amount as VCM?  
15 More or less?

16 A. Over 42 years, a lot.

17 Q. Fair enough.

18 Same answer for butadiene?

19 A. Butadiene, yes, sir.

20 Q. Okay. Butadiene is also a  
21 polymerizable chemical.

22 Right?

23 A. That is correct.

24 Q. And butadiene also can  
25 polymerize on the application of heat alone.

1 Right?

2 A. That is correct.

3 Q. In fact, butadiene has a  
4 relatively low temperature threshold for  
5 polymerization.

6 Right?

7 MR. BRAGA: Objection.

8 THE WITNESS: You'll have to  
9 clarify what fairly low is.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Sure.

12 Specifically, it can start to  
13 polymerize at about 175 degrees Fahrenheit?

14 A. That sounds about right, yes,  
15 sir.

16 Q. Now, when we talk about  
17 polymerization through your training and the  
18 refreshers, you understand that that's a  
19 process whereby the bonds of these various  
20 chemicals are broken and then form solids.

21 It's a crude way of kind of  
22 explaining the process.

23 Right?

24 A. Fairly well done, yes, sir.

25 Q. Okay. And it's these

1 initiators or these catalysts that actually  
2 break the bonds and start that process.

3 Right?

4 A. Yes, sir.

5 Q. So in the case of VCM, these  
6 initiators or catalysts, they break one of  
7 the chlorine bonds, leading to a reaction  
8 that ultimately forms PVC.

9 Right?

10 MR. BRAGA: Objection.

11 THE WITNESS: Yes, sir.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Through your educations, your  
14 trainings, your refreshers, have you come to  
15 understand that unlike styrene and butadiene,  
16 VCM does not polymerize on the application of  
17 heat alone?

18 MR. BRAGA: Object.

19 THE WITNESS: Rephrase the  
20 question.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Sure.

23 Through these -- through  
24 education, your refreshers, your training  
25 from, let's say, 1981 to the present, have

1     you come to understand that unlike styrene  
2     and butadiene, VCM does not polymerize on the  
3     application of heat alone?

4                     MR. BRAGA:   Same objection.

5                     THE WITNESS:   Heat alone can  
6                     initiate -- my understanding, heat  
7                     alone can initiate polymerization in  
8                     VCM.

9     QUESTIONS BY MR. GOMEZ:

10                    Q.       And which training, refresher  
11                    or education from 1981 to the present do you  
12                    specifically recall discussing that concept?

13                    MR. BRAGA:   Object.

14                    THE WITNESS:   The VCM is a  
15                    polymerizable material.

16                    And although oxygen is -- it's  
17                    oxygen purge -- the tank is oxygen  
18                    purged, that's when the car is running  
19                    down the tracks in normal operation,  
20                    going to and from a plant.

21                    In a derailment situation,  
22                    things happen to cars.  Fires start  
23                    and heat is applied, and oxygen can  
24                    get into the tanks.

25                    We deal with vinyl chloride as

1 a polymerizable material because based  
2 on the SDS, it shows that a  
3 polymerization can occur, is  
4 potential.

5 QUESTIONS BY MR. GOMEZ:

6 Q. So if I understood what you  
7 said just now correctly, the training, the  
8 refreshers, the education, they focus on the  
9 polymerization of VCM in connection with heat  
10 because in a derailment situation, there can  
11 be a loss of containment that allows oxygen  
12 to get in.

13 Is that right?

14 A. That's correct.

15 MR. LEVINE: Objection.

16 QUESTIONS BY MR. GOMEZ:

17 Q. But if there's not a loss of  
18 containment, and assuming that the tank was  
19 purged properly before loading, oxygen  
20 doesn't get in.

21 Right?

22 MR. LEVINE: Objection.

23 THE WITNESS: Possibly, yes,

24 sir.

25



1 QUESTIONS BY MR. GOMEZ:

2 Q. And assuming that oxygen does  
3 not infiltrate a derailed VCM tank car, heat  
4 alone will not polymerize that VCM.

5 Correct?

6 A. Correct.

7 MR. LEVINE: Objection.

8 QUESTIONS BY MR. GOMEZ:

9 Q. In fact, in terms of the  
10 application of heat alone, you've been  
11 educated or trained from 1981 to the present  
12 that VCM is stable up to at least 500 degrees  
13 Fahrenheit.

14 Right?

15 MR. LEVINE: Objection.

16 MR. BRAGA: Objection.

17 MR. LEVINE: Sorry.

18 THE WITNESS: We don't go to  
19 the highest temperature. We don't  
20 discuss what the maximum temperature  
21 would be.

22 We discuss heat in general  
23 terms. You apply heat to the product  
24 itself, and bad things can happen.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. So there's a discussion of heat  
3 generally, but not in terms of any one  
4 particular chemical at this particular  
5 temperature will lead to polymerization?

6 A. Correct.

7 Q. So fair to say that from 1981  
8 to the present, you've never received any  
9 education or training specific to the  
10 temperatures that may trigger VCM  
11 polymerization?

12 A. It's basically discussed in  
13 low, medium and high temperatures.

14 Q. What's a temperature range for  
15 low?

16 A. Ambient.

17 Q. And what's a temperature range  
18 when you say medium heat?

19 A. A couple hundred, 300 degrees.  
20 Upwards, it would be high.

21 Q. So anything above 300 would be  
22 high heat?

23 A. Low, medium and high.

24 Q. Understood.

25 I'm trying to get a sense of --

1           A.       I understand what you want.  
2       I'm just telling you we don't talk about  
3       specific temperature ranges. It's low heat,  
4       ambient, medium heat-ish, small fires, and  
5       then large fires, lots of heat.

6           Q.       So there's no assignment of  
7       specific temperatures to these three kind of  
8       ranges?

9           A.       Correct.

10          Q.       In your training and education  
11       from 1981 to the present, what heat category  
12       does VCM fall into in connection with  
13       polymerization?

14                   MR. BRAGA: Object.

15                   THE WITNESS: Medium to high.

16       QUESTIONS BY MR. GOMEZ:

17          Q.       From 1981 to the present,  
18       throughout these trainings and education  
19       courses and the like, what training have you  
20       received about the signals that show VCM  
21       polymerization in a railcar?

22                   MR. BRAGA: Object.

23                   THE WITNESS: Ask that question  
24       again.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Sure.

3 Throughout these trainings,  
4 from 1981 to the present, what instruction,  
5 if at all, have you received about the types  
6 of observations or the data that you can  
7 gather to assess whether polymerization is  
8 occurring in a derailed VCM car?

9 MR. BRAGA: Same objection.

10 THE WITNESS: When you have --  
11 when you have heat, lots of heat,  
12 applied, when your cars are involved  
13 in pool fires and such, pressure  
14 release devices begin to operate  
15 around 247 and a half PSI,  
16 approximately.

17 When PRDs, or pressure relief  
18 devices, are going off, that means  
19 it's absorbing heat from the outside,  
20 reducing liquid volume, increasing  
21 vapor space in the cars.

22 QUESTIONS BY MR. GOMEZ:

23 Q. So in order to determine  
24 whether VCM is polymerizing in a derailed  
25 railcar, you're looking for, among other

1 things, PRD activation?

2 A. PRD activation.

3 One of the keys that we use and  
4 teach first responders is if PRDs are going  
5 off, and they stop going off and there's no  
6 major change in operations, you haven't  
7 applied large volumes of water, extinguished  
8 fires around the cars and the PRDs go off,  
9 that's a sign, that's a signal, that  
10 something potentially could be going wrong  
11 inside that car.

12 Q. So I want to focus just on the  
13 activation rather than the activation and  
14 then the sudden stopping.

15 Are you trained that the  
16 activation of the PRDs alone is a sign or a  
17 signal that polymerization is occurring in a  
18 derailed VCM car?

19 A. No, sir.

20 Q. There are other explanations  
21 for why the PRD in a derailed VCM car could  
22 be activating.

23 Right?

24 A. Yes, sir.

25 Q. One of those explanations could

1 be heating resulting in an increase in  
2 pressure without polymerization occurring.

3 Right?

4 A. Yes, sir.

5 Q. And to put a fine point on it,  
6 there could be exposure to fires, for  
7 example, that are increasing the heat and  
8 therefore increasing the pressure in a  
9 derailed VCM car without polymerization  
10 occurring.

11 Right?

12 A. Yes, sir.

13 Q. In the trainings that you've  
14 undergone since 1981 where -- what  
15 instruction, if any, have you received about  
16 the connection between PRD activation and  
17 oxygen infiltration in a derailed railcar?

18 MR. BRAGA: Object.

19 THE WITNESS: We get a lot of  
20 training about PRD activation and  
21 things that can happen, that have been  
22 seen to happen.

23 QUESTIONS BY MR. GOMEZ:

24 Q. And what training do you recall  
25 specific to the concept of oxygen

1 infiltration as a result of PRD activation?

2 A. It's the discussion a lot, in a  
3 lot of the classes.

4 Q. Can you give me some examples  
5 of what's discussed in that respect?

6 A. When pressure is relieved from  
7 a -- through a PRD, there is a time when  
8 oxygen, depending on the atmosphere,  
9 atmospheric conditions, locations, that  
10 oxygen can be drawn back into the car.

11 Q. Okay. What are those  
12 atmospheric conditions?

13 A. High elevation, low elevation,  
14 different conditions, high atmospheric  
15 pressure, oxygen can migrate its way back  
16 into the cars even during the PRD activation.

17 Q. And who is it that has provided  
18 the information or the data that leads to  
19 that specific training about atmospheric  
20 conditions allowing oxygen to infiltrate the  
21 cars?

22 MR. LEVINE: Objection.

23 MR. BRAGA: Objection.

24 THE WITNESS: Are you looking  
25 for an instructor's name?

1 QUESTIONS BY MR. GOMEZ:

2 Q. Sure, let's start there.

3 A. There's -- we go to a lot of  
4 training classes. The Chlorine Institute  
5 has -- VCM is a mission chemical in  
6 transportation, so every other year, every  
7 third year, we have VCM-specific training.

8 We talk to manufacturers. We  
9 deal with manufacturers across the country,  
10 across North America, that handle VCM. And  
11 their emergency response teams and us train  
12 together. We talk together.

13 When we have an incident, we  
14 discuss specifics of what they've seen, what  
15 we've seen, to get better in the industry.

16 Q. But you don't recall anyone  
17 specifically who you can testify to now  
18 giving training or instruction about  
19 atmospheric conditions allowing oxygen  
20 infiltration via the PRD on the derailed VCM  
21 car?

22 MR. LEVINE: Objection.

23 THE WITNESS: Correct.

24 QUESTIONS BY MR. GOMEZ:

25 Q. You're aware that the VCM in



1 the derailed railcars in the East Palestine  
2 incident were -- contained stabilized VCM.

3 Right?

4 A. Correct.

5 Q. Did you know that at the time  
6 you first arrived on-scene?

7 A. When I first arrived on-scene,  
8 no, sir.

9 Q. Did you learn that at any point  
10 between when you first arrived on-scene and  
11 the vent and burn on February 6 --

12 A. Yes.

13 Q. -- 2023?

14 Can you estimate for me when  
15 you first learned?

16 A. Sunday -- Sunday morning,  
17 probably.

18 Q. So not too long after you first  
19 arrived on-scene.

20 Right?

21 A. Correct.

22 Q. And when you learned that the  
23 VCM in the derailed railcars was stabilized,  
24 did you learn specifically how it had been  
25 stabilized?

1 A. No, sir.

2 Q. And am I correct that at least  
3 as far as your training and experience goes,  
4 it didn't really matter how it was stabilized  
5 for purposes of your work at the site?

6 MR. BRAGA: Object.

7 THE WITNESS: That's correct.

8 QUESTIONS BY MR. GOMEZ:

9 Q. So is it fair to say that when  
10 you're responding to a derailment involving  
11 VCM, you treat all the VCM cars the same?

12 MR. BRAGA: Object.

13 MR. LEVINE: Objection.

14 THE WITNESS: Pretty much, yes,  
15 sir.

16 QUESTIONS BY MR. GOMEZ:

17 Q. And certainly for purposes of  
18 determining whether polymerization is a  
19 concern?

20 A. Correct.

21 Q. And that treatment really boils  
22 down to whether there's a significant amount  
23 of heat being introduced to the cars.

24 Right?

25 MR. LEVINE: Objection.

1 MR. BRAGA: Objection.

2 THE WITNESS: That's correct.

3 QUESTIONS BY MR. GOMEZ:

4 Q. And while you treat all  
5 derailed VCM cars the same for purposes of  
6 responding to concerns of polymerization, you  
7 agree with me that you can't treat cars  
8 containing VCM the same as cars containing  
9 other monomers.

10 Right?

11 A. That's correct.

12 Q. Because not all monomers are  
13 the same.

14 Right?

15 A. Correct.

16 Q. They have different properties.

17 Right?

18 A. They do.

19 Q. Different reactivity?

20 A. Yes, sir.

21 Q. Different polymerization  
22 characteristics.

23 Right?

24 A. Yes, sir.

25 Q. Different pressure curves.

1 Right?

2 A. Yes, sir.

3 Q. Pressure curves are certainly  
4 something that you're aware of in a  
5 derailment situation.

6 Right?

7 A. Yes, sir.

8 Q. And if all monomers are not the  
9 same, it's important to understand the  
10 specific chemical properties of the monomer  
11 you're dealing with in any given derailment  
12 situation.

13 Right?

14 MR. LEVINE: Objection.

15 THE WITNESS: Correct.

16 QUESTIONS BY MR. GOMEZ:

17 Q. So in the case of East  
18 Palestine, it was important to understand the  
19 specific properties of the VCM contained in  
20 the cars that derailed.

21 Right?

22 MR. LEVINE: Objection.

23 THE WITNESS: VCM in East

24 Palestine was dealt with as it was  
25 potentially polymerizing due to the

1 heat.

2 QUESTIONS BY MR. GOMEZ:

3 Q. My question is just a little  
4 bit different.

5 It's important to understand in  
6 connection with the East Palestine derailment  
7 the specific properties of the VCM contained  
8 in those cars.

9 Correct?

10 MR. LEVINE: Objection.

11 THE WITNESS: Based on the SDS,  
12 we dealt with it as designed, yes,  
13 sir.

14 QUESTIONS BY MR. GOMEZ:

15 Q. You mentioned just now,  
16 actually, the SDS.

17 Fair to say that that was a  
18 reliance document for the HAZMAT response in  
19 East Palestine derailment?

20 A. Yes, sir.

21 Q. Was it the primary reliance  
22 document?

23 MR. BRAGA: Object.

24 THE WITNESS: It was one of the  
25 documents used.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Okay. Can you name the other  
3 ones for me that you recall?

4 A. Condensed Chemical Dictionary.  
5 OxyChem. Oxy Vinyls' SDS. DOT guidebook.  
6 WISER. It's a program.

7 There were probably some other  
8 ones, but those are the ones that come to  
9 mind.

10 Q. Okay. In your line of work,  
11 you deal with SDS's frequently.

12 Fair statement?

13 A. Yes.

14 Q. SDS, by the way, stands for  
15 safety data sheet?

16 A. Yes, sir.

17 Q. And the safety data sheet is  
18 actually a standardized document.

19 Right?

20 A. That it is.

21 Q. It's an OSHA requirement, I  
22 believe?

23 A. Yes, sir.

24 Q. And it's designed to provide  
25 the same type of information in a uniform

1 manner for any type of hazardous chemical.

2 Right?

3 MR. LEVINE: Objection.

4 MR. BRAGA: Objection.

5 THE WITNESS: Yes, sir.

6 QUESTIONS BY MR. GOMEZ:

7 Q. The SDS is also a document that  
8 applies to a wide variety of scenarios.

9 Right?

10 MR. LEVINE: Objection.

11 THE WITNESS: I don't  
12 understand your question.

13 QUESTIONS BY MR. GOMEZ:

14 Q. Sure.

15 An SDS isn't specific to a  
16 derailment.

17 Right?

18 A. That's correct.

19 Q. An SDS isn't created  
20 specifically for rail transportation?

21 A. An SDS is created for  
22 information.

23 Q. There's one SDS created for one  
24 type of chemical.

25 Right?

1           A.       Correct.

2           Q.       And that's used across a  
3 variety of industries.

4                    Right?

5                    MR. LEVINE:  Objection.

6                    THE WITNESS:  Yes, sir.

7 QUESTIONS BY MR. GOMEZ:

8           Q.       Across a variety of HAZMAT  
9 incidents.

10                   Right?

11           A.       Yes, sir.

12           Q.       It's always the same document?

13                   MR. LEVINE:  Objection.

14                   THE WITNESS:  It's -- yes, it's  
15 a 16-section document.

16 QUESTIONS BY MR. GOMEZ:

17           Q.       And you mentioned that it's  
18 a -- one of the reliance documents.

19                   In the East Palestine  
20 derailment, were there particular sections  
21 that were relied on in the East Palestine  
22 derailment?

23                   MR. LEVINE:  Objection.

24                   THE WITNESS:  Yes, sir.

25



1 QUESTIONS BY MR. GOMEZ:

2 Q. Which sections were those?

3 A. 1 through 16.

4 Q. So the whole document?

5 A. Yes, sir.

6 Q. Right?

7 So if you were relying on the  
8 whole document, you agree with me it's  
9 important to read the whole document.

10 Right?

11 A. Yes, sir.

12 Q. And to understand the document  
13 as a whole.

14 Right?

15 A. Yes, sir.

16 (Day Exhibit 1 marked for  
17 identification.)

18 QUESTIONS BY MR. GOMEZ:

19 Q. Let's pull up Document  
20 Number 30, which we'll mark as Exhibit 1 to  
21 Mr. Day's deposition.

22 Mr. Day, our court reporter is  
23 going to put a sticker on it, and then you'll  
24 have a copy.

25 Mr. Day, when I -- just as a

1 general instruction, when I show you  
2 documents today, feel free to take a look at  
3 them before I ask you questions. I'm not  
4 going to repeat that over and over again.

5 Let me know when you're ready  
6 for me to ask some questions about that  
7 document in front of you.

8 MR. BRAGA: While he's doing  
9 that, can somebody tell me again what  
10 the exhibit number was?

11 MR. GOMEZ: This is 1.

12 MR. BRAGA: It's a good place  
13 to start.

14 MR. GOMEZ: Got to start  
15 somewhere.

16 QUESTIONS BY MR. GOMEZ:

17 Q. Mr. Day, if you want to spend  
18 some time with the document, just let me  
19 know. We'll go off the record while you do  
20 that.

21 A. No, that's okay.

22 Q. Are you ready for me to ask  
23 questions?

24 A. No, not yet.

25 Okay.

1 Q. The document that we've marked  
2 as Exhibit 1 to your deposition, on the cover  
3 page, it's actually the Group D, Exhibit 26  
4 to the NTSB investigative hearings.

5 Do you see that?

6 A. Yes, sir.

7 Q. And the title provided, at  
8 least by the NTSB, is "Vinyl Chloride Monomer  
9 Safety Data Sheet."

10 Right?

11 A. Yes, sir.

12 Q. As we get into the substance of  
13 the document itself, the document is the Oxy  
14 Vinyls safety data sheet for vinyl chloride  
15 monomer.

16 Right?

17 A. Yes, sir.

18 Q. Looking just at the title, it  
19 says, "Vinyl Chloride, parentheses, Monomer."

20 Right?

21 A. Yes, sir.

22 Q. This SDS is not specific to VCM  
23 in a stabilized form.

24 Right?

25 A. This is an SDS for vinyl

1 chloride monomer.

2 Q. And vinyl chloride monomer can  
3 exist in an unstable form and a stable form.

4 Right?

5 A. Sure.

6 Q. And this SDS applies equally to  
7 both.

8 Right?

9 A. Correct.

10 Q. If we look --

11 A. Let me rephrase that. I  
12 believe so.

13 Q. You believe so? Okay.

14 A. I believe so.

15 Q. Let's take a look at some of  
16 the statements made in the -- in the  
17 document.

18 On page 2 -- it's at the  
19 bottom. That's what I'll be referring to, 2  
20 of 18.

21 A. Yes, sir.

22 Q. There's a -- there's a  
23 statement towards the middle of the page. It  
24 says, "Physical hazards."

25 Do you see that?

1           A.       Yes, sir.

2           Q.       And it reads, "May mass explode  
3   in fire.  Extremely flammable gas.  Contains  
4   gas under pressure.  May explode if heated.  
5   Polymerization can occur."

6                   Did I read that correctly?

7           A.       Yes, sir.

8           Q.       When you testified that this  
9   document, the Oxy Vinyls SDS, is one that you  
10  relied on in responding to the derailment, is  
11  that statement one of the statements in the  
12  SDS you relied on?

13          A.       Yes, sir.

14          Q.       Let's go to the, let's see, the  
15  fourth page.  And I'll direct you -- just a  
16  little bit below the top, there's a section  
17  that says, "Physical Hazards Not Otherwise  
18  Classified."

19                   Do you see that?

20          A.       Yes, sir.

21          Q.       And it says, "Polymerization  
22  can occur."

23                   Right?

24          A.       Yes, sir.

25          Q.       Is that also a statement from

1 the SDS that you relied on in responding to  
2 the East Palestine derailment?

3 A. That is a statement in the SDS,  
4 yes, sir.

5 Q. Okay. But is it a statement  
6 that you relied on in responding to the East  
7 Palestine derailment?

8 A. It's a statement that's in the  
9 SDS.

10 Q. So because you relied on the  
11 SDS, you relied on that statement.

12 Is that fair?

13 A. Fair enough.

14 Q. And a similar statement appears  
15 on page 6, right above the section header for  
16 Section 6.

17 Let me know if you see that.

18 A. Page 6, yes, sir.

19 Q. Page 6, right above where it  
20 says, "Section 6, Accidental Release  
21 Measures," there's a section that says,  
22 "Physical Hazards Not Otherwise Classified."

23 Right?

24 A. Yes, sir.

25 Q. And that's the same one that we

1 just read, polymerization can occur.

2 Right?

3 A. It's a different page, but it's  
4 the same statement.

5 Q. Sure.

6 And we see that statement again  
7 on page 8, right towards the top. Let me  
8 know if you see that.

9 A. Yes, sir.

10 Q. And lastly, on page 10 there's  
11 a section titled "Hazardous Polymerization."

12 Can you see -- tell me if you  
13 see that.

14 A. Yes, sir.

15 Q. And that section is actually  
16 under a larger section called Section 10,  
17 Stability and Reactivity.

18 Right?

19 A. Yes, sir.

20 Q. And if we read it, it says,  
21 "Polymerization can occur. Exposure to the  
22 following conditions or mixtures with the  
23 following elements and materials can cause  
24 explosive or violent polymerization of VCM:  
25 air, sunlight, excessive heat, oxidizers,

1 catalytic metals such as copper, aluminum and  
2 their alloys and certain catalytic  
3 impurities. Avoid elevated temperatures,  
4 oxidizing agents, oxides of nitrogen, oxygen,  
5 peroxides, other polymerization  
6 catalysts/initiators, air and sunlight."

7 Did I read that correctly?

8 A. Yes, sir, you did.

9 Q. That section that we just read,  
10 Hazardous Polymerization within Section 10 of  
11 the Oxy Vinyls SDS, is that specifically a  
12 part of the SDS that you relied on in  
13 responding to the derailment?

14 A. Yes, sir.

15 Q. Okay. If we go back to the  
16 beginning of the document, you testified a  
17 moment ago that you relied on the whole SDS.

18 Right?

19 A. Yes, sir.

20 Q. Sections 1 through 16.

21 A. Yes, sir.

22 Q. Right?

23 And that in order to rely on  
24 that whole document, you have to read the  
25 document as a whole.



1 Right?

2 A. That's correct.

3 Q. So let's look at some other  
4 statements about polymerization.

5 A. No problem.

6 Q. There is a section there,  
7 precautionary statement, on page 2.

8 Do you see that?

9 A. Yes, sir.

10 Q. It says -- second sentence  
11 says, "Requires stabilizer to prevent  
12 potential dangerous polymerization."

13 Do you see that?

14 A. Yes, sir.

15 Q. Is that a statement that you  
16 relied on in connection with the response to  
17 the East Palestine derailment?

18 A. The stable -- yes, sir. Stick  
19 with that.

20 Q. Page 3. There's a section  
21 entitled "GHS - Precautionary Statement(s) -  
22 Prevention."

23 Do you see that, toward the  
24 middle of the page?

25 A. Yes, sir.

1 Q. And the second bullet point  
2 reads, "Stabilize with a polymerization  
3 inhibitor," parentheses, chemical name which  
4 I will omit, "or purging to remove oxygen."

5 With the exception of the  
6 omission, did I read that correctly?

7 A. Yes, sir.

8 Q. Is that a statement that you  
9 also relied on in this SDS in the course of  
10 responding to the East Palestine derailment?

11 A. I couldn't say that I was -- it  
12 was used.

13 Q. But it's in one of the 16  
14 sections of the SDS.

15 Right?

16 A. That is correct.

17 Q. And you relied on the whole  
18 SDS.

19 Right?

20 A. Yes, sir.

21 Q. Let's skip down to page 10,  
22 that section we were just discussing,  
23 Section 10, Stability and Reactivity.

24 A. Yes, sir.

25 Q. Very top section reads,

1 "Chemical Stability: Generally stable at  
2 normal temperatures and pressures; however,  
3 may violently polymerize or generate other  
4 hazardous conditions when not stabilized  
5 and/or stored correctly."

6 Did I read that correctly?

7 A. Yes, sir.

8 Q. Is this a section that you  
9 relied on in the course of responding to the  
10 East Palestine derailment?

11 A. It's in the document, yes, sir.

12 Q. So the answer is, yes, you did  
13 rely on it?

14 A. The document, yes, sir.

15 Q. And this is a statement in the  
16 document.

17 Right?

18 A. Okay. This is going to be a  
19 long, long day if we're going to keep going  
20 back to this exact same discussion.

21 We used the entire document.  
22 We had different people reading this  
23 document. We used different sections of it,  
24 yes, sir.

25 Q. Okay. I agree it'll be a long,

1 long day, so my question is simply: If this  
2 statement is in the document and you relied  
3 on the whole document, can you confirm, yes  
4 or no, that you relied on the statement under  
5 the Chemical Stability heading on page 10?

6 MR. LEVINE: Objection.

7 MR. BRAGA: Objection.

8 THE WITNESS: I don't know that  
9 we used that specific document -- or  
10 documentation, the statements, the  
11 wording. I don't know that we read  
12 that specific spot. Yes, we used the  
13 document.

14 QUESTIONS BY MR. GOMEZ:

15 Q. Okay. Would that be the same  
16 answer for the next section, Reactivity?

17 A. Yes, sir.

18 Q. And that reads, "Explosive or  
19 violent polymerization can occur when exposed  
20 to air, sunlight or excessive heat if not  
21 properly stabilized."

22 Right?

23 A. Yes, sir.

24 Q. And you'll agree with me that  
25 that's a statement in the SDS.

1 Right?

2 A. Yes, sir.

3 Q. Now, at any point in time when  
4 you were responding to the East Palestine  
5 derailment, do you recall any HAZMAT  
6 responders expressing confusion about the  
7 SDS?

8 MR. BRAGA: I'm sorry, can you  
9 read that back or restate it?

10 MR. GOMEZ: Sure.

11 Why don't I just ask it again.

12 MR. BRAGA: Whatever.

13 QUESTIONS BY MR. GOMEZ:

14 Q. At any point in time while you  
15 were responding to the derailment, do you  
16 recall discussion amongst the HAZMAT  
17 responders about confusion generated by this  
18 SDS?

19 A. There was a lot of discussion.  
20 You have to define what responding to. Are  
21 we responding mobilizing to the site? Are we  
22 working on the site? What part are you  
23 talking about?

24 Q. Sure.

25 At any point in time between

1 when you first arrived on-site the morning of  
2 February 5th to the time of the vent and  
3 burn, that's what I'm referring to.

4 A. Yes, there was a lot of  
5 confusion.

6 Q. Okay. Specifically confusion  
7 about the document.

8 Right?

9 A. And statements from folks about  
10 the stabilization of the material, yes, sir.

11 Q. And this document, as you  
12 understand it, was written by Oxy Vinyls.

13 Right?

14 A. That's correct.

15 Q. And this document actually  
16 provides contact information so that you can  
17 discuss the SDS with Oxy Vinyls.

18 Right?

19 A. That is correct.

20 MR. LEVINE: Objection.

21 QUESTIONS BY MR. GOMEZ:

22 Q. And you, in fact, were in  
23 communication with Oxy Vinyls between when  
24 you arrived on-site and the vent and burn.

25 Right?

1 A. That is correct.

2 Q. In fact, there were  
3 representatives of Oxy Vinyls on the site  
4 physically.

5 Right?

6 A. There were.

7 Q. Did you ever express to the  
8 folks at Oxy Vinyls, whether physically in  
9 East Palestine or otherwise, that you were  
10 confused about the statements made in the  
11 SDS?

12 A. Yes, sir.

13 Q. When?

14 A. The first day. Sunday.

15 Q. Sunday morning? Sunday  
16 afternoon?

17 A. Sunday morning.

18 Q. Who did you express that to?

19 A. The three folks that were there  
20 from Oxy.

21 Q. Do you recall roughly what  
22 time?

23 A. I don't remember what time they  
24 showed up. I know we had a conversation in a  
25 conference call early that morning with the

1 folks from Dallas, and later on during the  
2 day, the time I don't know, some people  
3 were -- a specific person said that  
4 polymerization cannot occur. Made us scratch  
5 our heads.

6 And reverting back to previous  
7 training, polymerization could occur. And  
8 when the Oxy folks showed up on-site, they  
9 were confused with the discuss -- with that  
10 statement as well.

11 Q. When you refer to the Oxy  
12 folks, you're referring to the three  
13 gentlemen who were on-site?

14 A. Yes, sir.

15 Q. And I want to make sure I  
16 understand what you testified to.

17 They also expressed confusion  
18 about the SDS?

19 A. They expressed confusion about  
20 the statement about the material would not  
21 polymerize.

22 Q. But regardless of who had that  
23 confusion, whether it was the three  
24 representatives in the field or the first  
25 responders, you were in communication with



1 experts at Oxy about this document.

2 Right?

3 MR. LEVINE: Objection.

4 MR. BRAGA: Object to the form.

5 THE WITNESS: That's correct.

6 QUESTIONS BY MR. GOMEZ:

7 Q. And do you recall anyone asking  
8 those folks pointedly how to reconcile any  
9 confusion or inconsistencies about  
10 polymerization in this document?

11 MR. LEVINE: Objection.

12 MR. BRAGA: Objection.

13 THE WITNESS: I don't recall.

14 QUESTIONS BY MR. GOMEZ:

15 Q. But you do recall that on  
16 several occasions, the experts in VCM and  
17 this document stated polymerization was not  
18 occurring.

19 Right?

20 MR. LEVINE: Objection.

21 THE WITNESS: I heard several  
22 people say that, yes, sir.

23 QUESTIONS BY MR. GOMEZ:

24 Q. And that would be the folks in  
25 Dallas, Texas.

1 Right?

2 A. That's correct.

3 Q. Who are experts in VCM?

4 MR. BRAGA: Objection.

5 MR. LEVINE: Objection.

6 THE WITNESS: I don't know if  
7 they're experts in VCM or not.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Fair enough.

10 They're certainly the  
11 manufacturers of the product in the railcars.  
12 Right?

13 A. That, they are.

14 MR. LEVINE: Objection.

15 QUESTIONS BY MR. GOMEZ:

16 Q. And the authors of this SDS?

17 MR. LEVINE: Objection.

18 THE WITNESS: Someone within  
19 Oxy is the author, yes, sir.

20 QUESTIONS BY MR. GOMEZ:

21 Q. Let's put that one aside. And  
22 I think you mentioned also relying on, I  
23 think you called it, the DOT guide.

24 Is that right?

25 A. Yes, sir.

1 Q. Is that also known as the  
2 Emergency Response Guide?

3 A. Yes, sir.

4 (Day Exhibit 2 marked for  
5 identification.)

6 QUESTIONS BY MR. GOMEZ:

7 Q. Let's pull up Document  
8 Number 119, and we'll mark that as Exhibit 2.

9 MR. GOMEZ: Why don't we  
10 actually go off record and we'll take  
11 a ten-minute break.

12 VIDEOGRAPHER: The time is  
13 10:02 a.m., and we're going off the  
14 record.

15 (Off the record at 10:02 a.m.)

16 VIDEOGRAPHER: The time is  
17 10:13 a.m., and we're back on the  
18 record.

19 QUESTIONS BY MR. GOMEZ:

20 Q. Mr. Day, we marked Exhibit 2 to  
21 your deposition before we took a break, but I  
22 do to want to revisit one topic very briefly  
23 before we discuss this exhibit.

24 We talked about your training  
25 regarding oxygen infiltration before the

1 break.

2 Am I correct that none of your  
3 training from 1981 to the present has  
4 indicated that if oxygen infiltrates a  
5 derailed VCM car, it's the oxygen that can  
6 cause the polymerization reaction to occur?

7 MR. LEVINE: Objection.

8 THE WITNESS: You need to ask  
9 that question again. I'm --

10 QUESTIONS BY MR. GOMEZ:

11 Q. Sure.

12 A. -- lost.

13 Q. We talked about oxygen  
14 infiltration.

15 Remember that? Right?

16 A. Yes, sir.

17 Q. In any of your training, HAZMAT  
18 training, from 1981 to the present, have you  
19 been told or learned that the oxygen is  
20 itself what initiates the polymerization  
21 reaction with VCM?

22 A. I've learned that oxygen can  
23 enter the car, yes, sir.

24 Q. Okay. Enter the car.

25 I'm just specific to whether

1 it's the oxygen that starts the  
2 polymerization reaction in a VCM car.

3 A. I don't know.

4 Q. You were a panelist on the NTSB  
5 hearings in East Palestine in June of 2023.

6 Right?

7 A. Yes, sir.

8 Q. One of your fellow panelists  
9 was Dr. William Carol.

10 Do you remember that?

11 A. Yes, sir.

12 Q. Dr. Carol is a chemist?

13 A. I believe so, yes, sir.

14 Q. And he made several statements  
15 about the chemistry and -- chemistry and the  
16 properties of VCM.

17 My question to you is, do you  
18 recall disagreeing with any of the statements  
19 he made about the chemistry of VCM?

20 MR. LEVINE: Objection.

21 MR. BRAGA: Objection.

22 THE WITNESS: Formally  
23 disagreeing, no, sir.

24 QUESTIONS BY MR. GOMEZ:

25 Q. How about informally

1 disagreeing?

2 A. Yes, because several times he  
3 stated that he didn't know why the statement  
4 of polymerization potential was on the SDS.

5 Q. Okay. So if you took issue, it  
6 was with his statements about some of the  
7 comments that are in the SDS?

8 A. Correct.

9 MR. LEVINE: Objection.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Was there anything else that  
12 you recall taking exception to or disagreeing  
13 with in what Dr. Carol said about the  
14 chemistry of VCM?

15 MR. LEVINE: Objection.

16 THE WITNESS: I'd have to refer  
17 back to read his document -- or his  
18 testimony.

19 QUESTIONS BY MR. GOMEZ:

20 Q. But fair to say nothing stands  
21 out right now?

22 A. Right now --

23 MR. LEVINE: Objection.

24 THE WITNESS: -- no, sir.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Let's look at document -- well,  
3 Exhibit Number 2.

4 Mr. Day, this is the Group C,  
5 Exhibit 3 to the NTSB hearings.

6 Right?

7 A. Yes, sir.

8 Q. And the title is "Emergency  
9 Response Guide, parentheses, ERG, 2020, Guide  
10 116, Vinyl Chloride."

11 Right?

12 A. Flammable gas unstable.

13 Q. This document, specifically  
14 Guide 116 from the 2020 ERG, is this another  
15 reliance document in the course of responding  
16 to the derailment?

17 A. This is a couple pages from  
18 that, yes, sir.

19 Q. And these are the pages that  
20 are specific to VCM.

21 Right?

22 MR. BRAGA: Objection.

23 THE WITNESS: I need to see the  
24 book.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Okay. You don't know that 116P  
3 is the designation for VCM?

4 A. Correct.

5 Q. I'll represent to you that 116P  
6 is the -- is the designation for VCM.

7 So if you can assume that for  
8 purposes of my questions, I've just got a  
9 couple for you on this document.

10 MR. LEVINE: Objection.

11 QUESTIONS BY MR. GOMEZ:

12 Q. Looking at this ERG --

13 A. Hang on just one second. I  
14 need to see the book. I don't know that 116  
15 is -- this -- you got to understand, DOT  
16 guidebook is -- it's a book that first  
17 responders use for information. You get a --  
18 you look at the chemical, whether the name of  
19 the chemical or the UM number, and it takes  
20 you to a guide.

21 The guides are -- these guides  
22 are set up lumping several chemicals as one,  
23 into one guide. Like this one is for  
24 acetylene as well.

25 Q. Okay. That's actually my



1 question. Right?

2 These guides, including looking  
3 this one we're looking at, 116, they just  
4 don't apply to just one particular chemical.

5 Right?

6 MR. BRAGA: Objection.

7 THE WITNESS: That is correct.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Right.

10 They apply to several that fall  
11 within a particular categorization or  
12 classification.

13 Right?

14 MR. BRAGA: Object.

15 THE WITNESS: Yes, sir.

16 QUESTIONS BY MR. GOMEZ:

17 Q. In this case, the guide we're  
18 looking at, Guide 116, applies to Gases -  
19 Flammable (Unstable).

20 Right?

21 A. I'm going to have to take your  
22 word for it, yes, sir.

23 Q. Well, I'm just reading the top  
24 of the guide.

25 Do you agree with me that

1 that's what it says?

2 MR. LEVINE: Objection.

3 THE WITNESS: I agree that

4 that's what it says.

5 QUESTIONS BY MR. GOMEZ:

6 Q. Okay. That's my only question.

7 And it also says, if we look  
8 underneath fire or explosion, there's a  
9 bullet point that reads, "Those substances  
10 designated with a P may polymerize  
11 explosively when heated or involved in a  
12 fire."

13 Did I read that correctly?

14 A. Yes, sir.

15 Q. My question is, is there  
16 anything in these two pages of the ERG that  
17 we're looking at that specifically identifies  
18 vinyl chloride monomer?

19 A. No, sir.

20 Q. And is there anything in these  
21 two pages that we're looking at of the 2020  
22 ERG that specifically discusses stabilized  
23 vinyl chloride monomer?

24 A. Not that I know of, no, sir.

25 Q. Okay. And in these two pages

1 of Guide 116 to the 2020 ERG, do you see any  
2 statements that talk about how stabilization  
3 affects the ability of flammable gases to  
4 polymerize?

5 MR. BRAGA: Object.

6 THE WITNESS: I'll refer back  
7 to the very beginning. I don't know  
8 that 116 is the guidebook guide for  
9 vinyl chloride in the DOT guidebook.

10 QUESTIONS BY MR. GOMEZ:

11 Q. My question is not about vinyl  
12 chloride. I'm going to ask it generally.

13 Do you see any statements in  
14 the two pages of Guide 116 to the 2020 ERG  
15 that talk about how stabilization interacts  
16 with the potential for polymerization?

17 A. I'll need to read this.

18 No, sir.

19 Q. We can put that one aside.  
20 We discussed CHLOREP earlier.

21 Do you remember that?

22 A. Yes, sir.

23 Q. And that's part of The Chlorine  
24 Institute?

25 A. It's a division within The

1 Chlorine Institute. Or a group within The  
2 Chlorine Institute.

3 Q. And SRS is an associate member  
4 of The Chlorine Institute.

5 Right?

6 A. Yes, sir.

7 Q. As an associate member of The  
8 Chlorine Institute, or SRS as an associate  
9 member of The Chlorine Institute, are you  
10 familiar with the Pamphlet 171 on vinyl  
11 chloride monomer?

12 A. There is a pamphlet about VCM,  
13 yes, sir.

14 (Day Exhibit 3 marked for  
15 identification.)

16 QUESTIONS BY MR. GOMEZ:

17 Q. Okay. Let's bring up  
18 Document 112. We'll mark that as Exhibit 3.

19 And, Mr. Day, I will tell you  
20 that I'm going to direct your attention to  
21 just a handful of pages that start roughly  
22 halfway through the packet.

23 The first slide is titled "VCM  
24 Workshop."

25 MR. LEVINE: There's no page

1 numbers?

2 MR. GOMEZ: Unfortunately, no.

3 It's 58 of the PDF, but that's not  
4 going to help you much.

5 Yep, you found it.

6 QUESTIONS BY MR. GOMEZ:

7 Q. My question to you, Mr. Day,  
8 is, the page that you're looking at  
9 references the Transportation & Emergency  
10 Workshop held July 13, 2016, in Calvert City,  
11 Kentucky, Westlake host.

12 Do you see that?

13 A. I do.

14 Q. Is this a workshop that you  
15 attended?

16 A. Obviously, yes, sir.

17 Q. Right?

18 Your name is listed there, and  
19 next to it is USES.

20 Right?

21 A. Yes, sir.

22 Q. What's USES?

23 A. United States Environmental  
24 Services.

25 Q. Is that at the time your

1 employer?

2 A. That is.

3 Q. And there's also a reference to  
4 a Drew McCarty.

5 Do you see that?

6 A. Yes, sir.

7 Q. And next to his name is SPSI.  
8 Right?

9 A. That's correct.

10 Q. SPSI is one of the contractors  
11 that responded to the derailment in East  
12 Palestine.

13 Right?

14 A. Yes, sir.

15 Q. And specifically Mr. McCarty  
16 responded to the derailment.

17 Right?

18 A. That's correct.

19 Q. The next page of this  
20 presentation references the VCM workshop at  
21 the top and notes a "Detailed discussion of:  
22 Physical & Chemical Properties."

23 Do you see that?

24 A. Yes, sir.

25 Q. Do you recall participating in

1 a Chlorine Institute workshop in or around  
2 2016 where you discussed VCM physical and  
3 chemical properties?

4 A. I remember the class,  
5 basically, yes.

6 Q. The last bullet point of that  
7 page notes, "Discussion will be used as a  
8 baseline for pamphlet development."

9 Do you see that?

10 A. Yes, sir.

11 Q. Did you participate in The  
12 Chlorine Institute's preparation of any  
13 pamphlets regarding vinyl chloride monomer?

14 A. I don't recall.

15 Q. Okay. We can put that one  
16 aside.

17 MR. BRAGA: The whole exhibit?

18 MR. GOMEZ: Yes.

19 MR. BRAGA: Okay.

20 (Day Exhibit 4 marked for  
21 identification.)

22 QUESTIONS BY MR. GOMEZ:

23 Q. Let's bring up Document  
24 Number 32, which we'll mark as Exhibit 4.

25 Let's actually scratch that,

1 Gina.

2 Can you bring up Document  
3 Number 137, which we'll mark as Exhibit 4?

4 Mr. Day, this Exhibit 4 that  
5 we've just handed to you is Pamphlet 171 from  
6 The Chlorine Institute titled "Vinyl Chloride  
7 Monomer VCM Tank Car & Cargo Tank Handling  
8 Manual."

9 Do you see that?

10 A. I do.

11 Q. It appears to be roughly a  
12 63-page document.

13 My question to you is, is this  
14 document that we've marked as Exhibit 4 one  
15 of the documents that you relied on in the  
16 East Palestine -- in responding to the East  
17 Palestine derailment?

18 A. Information in it, yes, sir.

19 Q. I want to go through some of  
20 that information to understand what it was  
21 exactly that you relied on.

22 On page -- the page numbers are  
23 marked on the top right corner, just for your  
24 information.

25 On page 3, there's a section



1 that says -- that's 1.5, Disclaimer.

2 Do you see that?

3 A. Yes, sir.

4 Q. And there's a sentence that  
5 begins with the word "moreover" and reads,  
6 "Moreover, it should not be assumed that  
7 every acceptable procedure is included or  
8 that special circumstances may not warrant  
9 modified or additional procedure. The user  
10 should be aware that changing technology or  
11 regulations may require a change in the  
12 recommendations herein."

13 Did I read that correctly?

14 A. Yes, sir.

15 Q. When you were relying on  
16 certain information in this document,  
17 Pamphlet 171, were you aware of this  
18 disclaimer?

19 A. I don't pay that much attention  
20 to the disclaimers, no, sir.

21 Q. Okay. Let's look at page 4.  
22 There's Section 2.2, VCM and  
23 Transportation.

24 Do you see that?

25 A. Yes, sir.

1 Q. And the last sentence of that  
2 section reads, "VCM is shipped as a  
3 compressed liquified gas and must be  
4 stabilized by appropriate means, such as the  
5 addition of a chemical inhibitor or purging  
6 to remove oxygen, to prevent dangerous  
7 polymerization," parentheses, several  
8 regulations.

9 Did I read that right?

10 A. Yes, sir.

11 Q. Is this statement in  
12 Section 2.2 a statement that you relied on in  
13 the course of responding to the East  
14 Palestine derailment?

15 A. It's a statement in this  
16 document, yes, sir. I don't know that we  
17 used that specific statement or concerned  
18 about it.

19 Q. Section 2.3, right below that,  
20 Polymerization and Other Reaction  
21 Considerations.

22 Do you see that section?

23 A. Yes, sir.

24 Q. It reads, "VCM is shipped in a  
25 stabilized state and is generally stable at

1 normal temperatures and pressures."

2 Right?

3 A. Yes, sir.

4 Q. It goes on to say, "However,  
5 certain conditions or mixtures with certain  
6 materials can cause VCM to violently  
7 polymerize or other hazardous conditions."

8 Right?

9 A. It does.

10 Q. The next sentence, "Exposure to  
11 the following conditions or mixtures with the  
12 following elements and materials can cause  
13 explosive or violent polymerization of VCM."

14 Right?

15 A. That's correct.

16 Q. And one of the bullet points is  
17 excessive heat.

18 Do you see that?

19 A. That's correct.

20 Q. Are these statements statements  
21 that you relied on in the course of  
22 responding to the East Palestine derailment?

23 A. We -- yes, sir.

24 Q. The document doesn't define  
25 what excessive heat is.

1 Do you agree with me on that?

2 A. Yes, sir.

3 Q. What did you take excessive  
4 heat to mean in this context?

5 A. Excessive heat.

6 Q. How do you define "excessive  
7 heat"?

8 A. Excessive heat.

9 Q. What makes heat more or less  
10 excessive?

11 A. Can you stand it or not.

12 Q. Can you stand it, like standing  
13 next to it?

14 A. Yes, sir.

15 Q. So if you can stand next to it,  
16 it's not excessive heat.

17 Right?

18 A. Correct.

19 Q. If you can't stand next to it,  
20 it's excessive heat?

21 A. If you're exposed to it and you  
22 get burned, it's probably excessive heat.

23 Q. Okay. There's no more granular  
24 kind of definition of what excessive heat is  
25 to you?

1           A.       No, sir.

2           Q.       If we go on to the next page of  
3 the document, this Pamphlet 171 provides some  
4 specific comments about heat ranges and vinyl  
5 chloride monomer.

6                   Do you see that in the section  
7 that starts with "In addition to violent  
8 polymerization"?

9           A.       I do.

10          Q.       Okay. And I'll read that into  
11 the record. It says, "In addition to violent  
12 polymerization, VCM may also react with  
13 organic peroxides, strong bases and oxidizing  
14 agents, resulting in potential heat  
15 generation, fire and/or explosion."

16                   Did I read that right?

17          A.       Yes, sir.

18          Q.       The next sentence says, "In  
19 particular, at 59 degrees to 406.4 degrees  
20 Fahrenheit, 15 degrees Celsius to 208 degrees  
21 Celsius, ultraviolet, UV, can initiate a  
22 reaction between VCM with excessive oxygen to  
23 produce peroxides; it's also commonly  
24 referred to as polyperoxides, polyvinyl  
25 peroxides."

1 Did I read that right?

2 A. Yes, sir.

3 Q. "These reactants can  
4 automatically ignite on their own to create  
5 an explosive condition under extreme heat or  
6 impact."

7 Right?

8 A. Yes, sir.

9 Q. So just focusing on this  
10 statement about what can happen to VCM  
11 between heat ranges of 59 degrees and  
12 406.4 degrees Fahrenheit, is this a statement  
13 that you relied on in the course of  
14 responding to the East Palestine derailment?

15 A. Yes, sir.

16 Q. The next sentence talks about  
17 what happens at a different heat range.

18 It says, "Further heating to  
19 676.4 degrees Fahrenheit, 358 degrees  
20 Celsius, causes peroxides to decompose to  
21 formaldehyde, carbon monoxide and hydrogen  
22 chloride. Peroxides may also cause  
23 uncontrollable polymerization reactions at  
24 high concentrations or temperatures."

25 Do you see that?

1           A.       Yes, sir, I do.

2           Q.       Is this statement one that you  
3   relied on in the course of responding to the  
4   East Palestine derailment?

5           A.       The operative words that were  
6   used is "high" -- "excessive heat," "high  
7   concentrations and temperatures."

8                   Excessive heat is one of the  
9   main statements that's used to call that  
10   polymerization could be occurring.

11          Q.       So the reference to heating to  
12   676.4 degrees Fahrenheit, 358 degrees Celsius,  
13   was not something that was considered?

14                   MR. LEVINE:   Objection.

15                   THE WITNESS:   Excessive heat.

16   QUESTIONS BY MR. GOMEZ:

17          Q.       Understood.   My question is  
18   specific.

19                   Did you consider that the  
20   document talks about heating specifically to  
21   676.4 degrees Fahrenheit, 358 degrees  
22   Celsius?

23                   MR. LEVINE:   Objection.

24                   THE WITNESS:   All I can say is  
25   excessive heat was applied to these

1 cars.

2 QUESTIONS BY MR. GOMEZ:

3 Q. Were you aware of the  
4 temperature ranges that Pamphlet 171 talks  
5 about in connection with polymerization on  
6 page 5 of this exhibit during the derailment?

7 A. I did not.

8 Q. The next page, page 6, there's  
9 a Section 2.6, Temperatures Considerations.  
10 Do you see that?

11 A. Yes, sir, I do.

12 Q. And it says, "In typical VCM  
13 plant operations, VCM process temperatures  
14 range between ambient temperature 68 degrees  
15 Fahrenheit, 20 degrees Celsius, and  
16 300 degrees Fahrenheit, 148.9 degrees  
17 Celsius, while contained under pressure."

18 Do you see that?

19 A. I do.

20 Q. Is that a statement that was  
21 relied on in the course of responding to the  
22 East Palestine derailment from this  
23 Pamphlet 171?

24 MR. LEVINE: Objection.

25 THE WITNESS: I can't say that



1           we actually used that statement in our  
2           response considerations.

3       QUESTIONS BY MR. GOMEZ:

4           Q.       Did you use any information  
5           about the temperatures at which VCM is  
6           processed while contained under pressure when  
7           determining your response activities in East  
8           Palestine derailment?

9                   MR. LEVINE:   Objection.

10                  THE WITNESS:   There were a lot  
11                  of -- there was a lot of information  
12                  being fed into the technical group  
13                  about what was going on in the cars.

14                  The one thing about this  
15                  document is, this is in normal  
16                  conditions.   This is in a plant  
17                  operation.   It's not on the side of a  
18                  derailed -- or in a city where a  
19                  derailment has occurred and excessive  
20                  heat has been applied to tank cars.

21       QUESTIONS BY MR. GOMEZ:

22           Q.       Well, actually, if we look at  
23           the cover page for this document, it says  
24           that it applies specifically to tank car and  
25           cargo tank handling.

1 Right?

2 A. That's correct.

3 Q. Okay. And the VCM involved in  
4 the East Palestine derailment was in a tank  
5 car.

6 Right?

7 A. It was, but it was also exposed  
8 to excessive heat in a derailment.

9 Q. Okay. So your testimony is  
10 that this Pamphlet 171 doesn't apply to the  
11 conditions that a VCM-containing railcar are  
12 exposed to in a derailment?

13 A. Things change from normal  
14 conditions in a derailment.

15 Q. So does this document apply to  
16 a derailment or not?

17 A. It could.

18 MR. BRAGA: Objection.

19 THE WITNESS: But -- excuse me.

20 It could.

21 QUESTIONS BY MR. GOMEZ:

22 Q. And it could not, I guess?

23 A. It could not.

24 Q. So how do you determine what  
25 parts apply and don't apply in a derailment

1 situation?

2 MR. LEVINE: Objection.

3 MR. BRAGA: Objection.

4 THE WITNESS: We base it on  
5 visual observations, gathering as much  
6 data as we can about the cars,  
7 speaking to the manufacturers, coming  
8 up with conclusions, developing a  
9 response plan and implementing such  
10 response plan.

11 QUESTIONS BY MR. GOMEZ:

12 Q. You mentioned observations and  
13 data.

14 Does that include temperature  
15 data?

16 A. At times, yes, sir, when you  
17 can get it correctly.

18 Q. And then you take those data  
19 and observations and discussions with the  
20 product manufacturers to understand what  
21 parts of this document might apply to a  
22 derailment scenario.

23 Is that fair?

24 MR. LEVINE: Objection.

25 THE WITNESS: That is fair.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Let's skip down to page 49.

3 This page 49 of Pamphlet 171,  
4 which we've marked as an exhibit to your  
5 deposition, is titled "Appendix C. Vapor  
6 Pressure for Vinyl Chloride."

7 Right?

8 A. Yes, sir.

9 Q. The vapor pressure of a  
10 chemical contained in a derailed tank car is  
11 a data point that you're paying attention to  
12 in responding to a derailment.

13 Right?

14 A. Yes, sir.

15 Q. And in this case with respect  
16 to VCM in East Palestine, you were paying  
17 attention to the vapor pressure curve for VCM  
18 in those derailed railcars.

19 Right?

20 A. We wanted to, yes, sir.

21 Q. Looking at what this chart  
22 represents, would you agree with me that it  
23 shows that for VCM generally, as temperature  
24 increases, so does pressure?

25 MR. BRAGA: Object.

1 THE WITNESS: That is correct.

2 QUESTIONS BY MR. GOMEZ:

3 Q. And would you agree with me  
4 that it also shows that as temperature  
5 decreases, pressure decreases?

6 A. That is correct.

7 Q. Would you also agree with me  
8 that in connection with vinyl chloride  
9 monomer, pressure cannot increase without a  
10 corresponding increase in temperature?

11 A. Ask the question again.

12 Q. Sure.

13 Would you agree with me that  
14 with respect to vinyl chloride monomer, VCM,  
15 its temperature in a contained vessel cannot  
16 increase without a corresponding increase in  
17 pressure?

18 A. Correct.

19 Q. Okay. And the opposite is  
20 true; there cannot be a corresponding  
21 increase in pressure without also an increase  
22 in temperature.

23 Right?

24 A. Correct.

25 Q. You see that there's a

1 reference in this chart to a PRD start to  
2 discharge setting 247.5 PSI?

3 A. Yes, sir.

4 Q. I think you discussed that  
5 earlier. That's the start to discharge  
6 pressure for a pressure relief device.

7 A. Correct.

8 Q. Right?

9 A. In normal conditions.

10 Q. And here, according to the  
11 vapor pressure curve for vinyl chloride  
12 monomer, that pressure of 247.5 corresponds  
13 with a temperature of roughly 180 and  
14 190 degrees.

15 Is that fair?

16 A. Fair.

17 Q. Okay. 247.5 PSI, that was the  
18 start to discharge pressure for the PRDs that  
19 were equipped on the railcars that derailed  
20 in East Palestine.

21 Right?

22 MR. LEVINE: Objection.

23 THE WITNESS: For the class of  
24 car that the vinyl chloride is  
25 transported in, they have

1 begin-to-operate pressures of 247.5.

2 I can't say that every one of those

3 PRDs, without looking at the

4 documentation, were set for 247.5.

5 QUESTIONS BY MR. GOMEZ:

6 Q. Okay. That's fair.

7 But we can agree that when

8 there's pressure equal to the start to

9 discharge for the PRDs that are equipped on

10 vinyl chloride monomer cars, the temperature

11 is at least 180 to 190 degrees?

12 A. That's what the graph says,

13 yes, sir.

14 Q. There's also, if we look at

15 this chart, a temperature reference 200.

16 Do you see that on the bottom

17 right?

18 A. Yes, sir.

19 Q. And again, just using the

20 chart, that corresponds to roughly 300 PSI in

21 pressure.

22 Right?

23 A. Yes, sir.

24 Q. The design pressure of a DOT

25 105 is 300 PSIG.

1 Right?

2 MR. BRAGA: Object.

3 THE WITNESS: On a 105J, what  
4 car?

5 QUESTIONS BY MR. GOMEZ:

6 Q. On the 105 cars that were  
7 involved in the derailment.

8 A. What's the whole classification  
9 of the car?

10 Q. I think you got me there.

11 A. I believe --

12 Q. Let me ask you this. Let me  
13 ask you this.

14 What did you understand the  
15 design pressure of the five derailed VCM cars  
16 in East Palestine to be?

17 A. 105J300W cars.

18 Q. And the design pressure for  
19 that specific car is?

20 A. The tank test pressure is 300.  
21 The burst pressure is about three times that.

22 Q. Three times that, so roughly  
23 900 PSIG?

24 A. Correct.

25 Q. The data that's provided by



1     this Appendix C, page 49 to the -- to  
2     Pamphlet 171, is this data that was relied on  
3     in the course of responding to the East  
4     Palestine derailment?

5             A.       This was reviewed, yes.

6             Q.       This was data and information  
7     that would have been available to first  
8     responders on-site at the East Palestine  
9     derailment.

10            Right?

11            MR. LEVINE:  Objection.

12            THE WITNESS:  This document --  
13     this -- the pressure curve was  
14     considered and looked at, yes, sir.

15     QUESTIONS BY MR. GOMEZ:

16            Q.       We can put that one aside, sir.

17            You also -- you mentioned a  
18     couple of other reliance documents.

19            Do you recall whether there  
20     were any reliance documents authored by the  
21     New Jersey Department of Health and Human  
22     Services that were used in the derailment?

23            A.       Yes, sir.

24            (Day Exhibit 5 marked for  
25     identification.)

1 QUESTIONS BY MR. GOMEZ:

2 Q. Let me show you my Document  
3 Number 42, which we will mark as Exhibit 5.

4 Mr. Day, this Exhibit 5 to your  
5 deposition. On the cover page it notes it's  
6 the Group H, Exhibit 56 to the NTSB hearing.

7 Is that right?

8 A. Yes, sir.

9 Q. And the title, at least given  
10 by the NTSB, is "NJ Department of Health and  
11 Senior Services, Hazardous Substance Fact  
12 Sheet, Vinyl Chloride, June 2001."

13 Do you see that?

14 A. Yes, sir.

15 Q. Taking a look at the document,  
16 is this one of the documents that first  
17 responders and HAZMAT responders relied on in  
18 the course of responding to the derailment?

19 MR. LEVINE: Objection.

20 THE WITNESS: It was reviewed,  
21 yes, sir.

22 QUESTIONS BY MR. GOMEZ:

23 Q. Okay. Do you recall how this  
24 document came to be involved in the  
25 discussion amongst HAZMAT responders?

1 MR. BRAGA: Objection.

2 THE WITNESS: There was -- due  
3 to the confusion of will it  
4 polymerize, will it not polymerize,  
5 there were additional requests made,  
6 searches done, to find other documents  
7 to review during the mounting of the  
8 response and preparing for operations  
9 at the site.

10 QUESTIONS BY MR. GOMEZ:

11 Q. And do you recall whether this  
12 specific document, Exhibit 5, was one of  
13 those that was requested or found via a  
14 search to supplement the discussions?

15 A. It was.

16 Q. Who was it that found it or  
17 provided it, if you know?

18 A. I do not know.

19 Q. But nevertheless, you can  
20 confirm that it was one that was reviewed?

21 A. It was.

22 Q. Again, this is -- if we look at  
23 the first substantive page of the document,  
24 it's a hazardous substance fact sheet  
25 provided by the New Jersey Department of

1 Health and Senior Services.

2 Right?

3 A. Yes.

4 Q. And it's the fact sheet for  
5 vinyl chloride, according to the document.

6 Right?

7 A. That is correct.

8 Q. And the date of the document is  
9 December 1994.

10 Do you see that top right  
11 corner?

12 A. Yes, sir.

13 Q. And then with a revision in  
14 June of 2001.

15 Right?

16 A. Yes, sir.

17 Q. You agree with me that this  
18 document is not specific to stabilized vinyl  
19 chloride monomer.

20 Correct?

21 A. This document is for vinyl  
22 chloride.

23 Q. Which can be stable or  
24 unstable.

25 Correct?

1           A.       That is correct.

2           Q.       And if we look at page 3 of 6  
3       noted in the top right-hand corner, there's a  
4       section that says, "Handling and Storage."

5                   Do you see that?

6           A.       Yes, sir.

7           Q.       And the fourth bullet point  
8       reads, "Store in tightly closed containers in  
9       a cool, well-ventilated area away from heat,  
10      air and sunlight, as hazardous polymerization  
11      may occur."

12                  Do you see that?

13          A.       Yes, sir.

14          Q.       The statement that I just read,  
15      is that one that you relied on from this  
16      document in the course of responding to the  
17      East Palestine derailment?

18          A.       This is a document that was  
19      used, reviewed and discussed, and  
20      polymerization potential was pointed out.

21          Q.       Pointed out specifically from  
22      this document?

23          A.       Yes.

24          Q.       Okay. As we look at this  
25      document, do you see any reference to the

1 stabilization of vinyl chloride monomer?

2 A. No, sir.

3 Q. At the time of your response to  
4 the derailment, between February 5th and  
5 February 6, 2023, were you aware of the fact  
6 that this document conflicts with other vinyl  
7 chloride guidance given by the State of New  
8 Jersey?

9 MR. LEVINE: Objection.

10 MR. BRAGA: Objection.

11 THE WITNESS: No, I was not.

12 (Day Exhibit 6 marked for  
13 identification.)

14 QUESTIONS BY MR. GOMEZ:

15 Q. Let's look at Document 126,  
16 which we'll mark as Exhibit 6 to your  
17 deposition.

18 Mr. Day, this document that  
19 we've marked as Exhibit 6 is also the  
20 Group H, Exhibit 57 to the NTSB hearings.

21 Right?

22 A. Yes, sir.

23 Q. And the title provided by the  
24 NTSB is "New Jersey Department of Health -  
25 Right to Know Hazardous Substance Fact Sheet,

1     October 2015."

2                     Right?

3             A.       That it is.

4             Q.       And according to the first  
5     page, it's another New Jersey hazardous  
6     substance fact sheet for vinyl chloride.

7                     Right?

8             A.       That it is.

9             Q.       The date of the original  
10    document is November 2010, with a revision in  
11    October 2015.

12                    Right?

13            A.       That is correct.

14            Q.       Looking at this document, can  
15    you tell me whether this is one that was  
16    relied on by first responders and HAZMAT  
17    responders in connection with the East  
18    Palestine derailment?

19            A.       I do not know.

20            Q.       Okay. Fair to say you don't  
21    recall any specific discussions about this  
22    document at the time of the derailment?

23            A.       I know that a document from the  
24    New Jersey -- from New Jersey was referenced  
25    and discussed, and which of these documents,

1 I can't tell you which one was used.

2 Q. Okay.

3 A. I do not recall.

4 Q. But focusing just on this  
5 document, there's --

6 A. Excuse me.

7 Q. -- statements regarding  
8 polymerization that I want to direct your  
9 attention to.

10 The first is on that first  
11 page, right above the section that's entitled  
12 "Workplace Exposure Limits."

13 A. Yes, sir.

14 Q. There's a bullet point that  
15 reads, "Explosive polymerization may occur at  
16 elevated temperatures if vinyl chloride is  
17 not inhibited."

18 A. Correct.

19 Q. Right?

20 A. Yes, sir.

21 Q. Do I understand correctly from  
22 your prior testimony that you can't confirm  
23 whether this was a statement that was relied  
24 on by first responders in connection with the  
25 East Palestine derailment?



1 MR. BRAGA: Objection.

2 THE WITNESS: There -- you  
3 showed me two documents, and I  
4 remember we used a document from New  
5 Jersey Health.

6 QUESTIONS BY MR. GOMEZ:

7 Q. Okay.

8 A. Which one, I can't tell you.

9 Q. But you can't confirm whether  
10 it was Exhibit 5 or now Exhibit 6.

11 Right?

12 A. You are correct.

13 Q. Okay. Let's look at some of  
14 the other statements in this document.

15 On page 3 of 6, there is a  
16 section entitled "Fire Hazards."

17 Do you see that?

18 A. 3 of 6.

19 Yes, sir.

20 Q. The first bullet point reads,  
21 "Vinyl chloride is a flammable and reactive  
22 gas that can explosively polymerize if not  
23 inhibited."

24 Did I read that right?

25 A. That, you did.

1 Q. And at least according to this  
2 document, that's guidance given by the State  
3 of New Jersey.

4 Right?

5 MR. BRAGA: Object.

6 THE WITNESS: That is correct.

7 QUESTIONS BY MR. GOMEZ:

8 Q. We can put that document aside,  
9 sir. Thank you.

10 You mentioned in connection  
11 with whichever one of the New Jersey  
12 documents was used that it was either found  
13 or provided in an effort to get more  
14 information about VCM.

15 Fair?

16 A. Correct.

17 Q. As part of your efforts -- and  
18 when I say "your," I mean HAZMAT responders  
19 on the scene in East Palestine -- were there  
20 any consultations with outside VCM experts  
21 other than the manufacturer of the product?

22 A. Yes, sir.

23 Q. Who were those experts?

24 A. One retired VCM emergency  
25 response and production manager from Westlake

1 Polymers, and one degreed chemist, retired  
2 HAZMAT director, for another Class I  
3 railroad.

4 Q. Okay. Let's go with the first  
5 one that you mentioned.

6 Was that Bob Gold?

7 A. That was.

8 Q. And Bob Gold was previously  
9 employed by Westlake.

10 Right?

11 A. That's correct.

12 Q. Westlake manufactures VCM?

13 A. Yes, sir.

14 Q. Westlake is a competitor of Oxy  
15 Vinyls?

16 A. Yes, sir.

17 Q. What role, if you know, did Bob  
18 Gold have at -- when he was last employed by  
19 Westlake?

20 A. He was an emergency response  
21 person, and he worked in the plant.

22 Q. Do you know if at any point  
23 during Bob Gold's tenure at Westlake he was  
24 responsible for the production of VCM?

25 A. He worked in a VCM plant.

1 Q. Did he work as like a process  
2 engineer?

3 A. I do not know.

4 Q. Do you understand his roles to  
5 be limited to emergency response?

6 A. We knew him through the  
7 emergency response, but he knew VCM very  
8 well.

9 Q. Do you know if he was a chemist  
10 at Westlake?

11 A. I don't know. He was an  
12 emergency response person.

13 Q. Do you know if he was a  
14 chemical engineer at Westlake?

15 A. I don't -- he was an emergency  
16 response person. That's how we knew him.

17 Q. What do you know about Bob  
18 Gold's educational background, if anything?

19 A. I do not.

20 Q. So you don't know if he has any  
21 chemical training?

22 A. I do not.

23 Q. When did you first reach out to  
24 Bob Gold in connection with the East  
25 Palestine derailment?

1           A.       I'd have to look back at my  
2 records.

3                    (Day Exhibit 7 marked for  
4 identification.)

5 QUESTIONS BY MR. GOMEZ:

6           Q.       Okay. Let's bring up  
7 Document 143, which we'll mark as Exhibit 7  
8 to the deposition.

9                    And I will represent for the  
10 record that this was produced as SRS 338, but  
11 for technical reasons, we can't get it to  
12 print out with the Bates number.

13                   MR. BRAGA: I'll confirm that  
14 we produced it, and I'm sorry about  
15 that.

16                   MR. GOMEZ: I think it's on our  
17 end, actually, but thank you.

18 QUESTIONS BY MR. GOMEZ:

19           Q.       Mr. Day, what we're looking at  
20 is Exhibit 7 to your deposition.

21                   Do you recognize this document?

22           A.       I don't recognize the document,  
23 no, sir.

24           Q.       No?

25           A.       I know what it is.

1 Q. And it appears to be a text  
2 message that you sent to Bob Gold.

3 Fair?

4 A. That's correct.

5 Q. And this printout of the text  
6 message was generated from your mobile  
7 device.

8 Is that also fair?

9 A. Yes, sir.

10 Q. If we look specifically at the  
11 text message, it appears that the time was  
12 9:04:18 when you texted Bob Gold.

13 Right?

14 A. That is correct.

15 Q. Do you know if that's Eastern  
16 Time or Central Time?

17 A. It's 9:04:18. That's all I can  
18 tell you.

19 Q. Fair enough.

20 At the time that you sent this  
21 text message to Bob Gold on Sunday,  
22 February 5, 2023, you were already on the  
23 ground in East Palestine.

24 Right?

25 A. Yes, sir.

1 Q. Whether it was 9:04 or 8:04 --

2 A. Yeah, that doesn't matter. I'm  
3 looking at the date.

4 Q. Okay. And the text message you  
5 sent to Bob Gold is -- says, "Bob, this is  
6 Chip Day. I really need to talk about VCM  
7 involved in fire in Ohio."

8 Did I read that correctly?

9 A. That, you did.

10 Q. Did you send this message to  
11 Bob Gold before or after you directly  
12 consulted with anyone from Oxy?

13 A. After.

14 Q. And what, if anything, about  
15 the conversation you had with Oxy prompted  
16 you to send this message?

17 A. So you have to understand a lot  
18 about the emergency response business,  
19 especially when you have hazardous chemicals  
20 involved in pretty major incidents.

21 We -- it's almost phone a  
22 friend. We are a very tight-knit community.  
23 We communicate a lot, bouncing ideas off each  
24 other, confirming or denying information that  
25 we've received.

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1                   After the conference call in  
2   the Suburban, we got conflicting information  
3   and wanted to bounce it off somebody else.  
4   Bob is somebody that I regard highly as a  
5   professional, and he has been exposed to  
6   incidents involving vinyl chloride incidents,  
7   spills, fires, and wanted to get his take on  
8   some of the information we were receiving.

9           Q.       Did you specifically want to  
10   get his take on the conclusion that Oxy  
11   shared with you that morning, February 5th,  
12   that polymerization was not occurring in the  
13   cars?

14           A.       Correct.

15           Q.       We don't see a response, at  
16   least in text, from Bob Gold here.

17                   Right?

18           A.       That's correct.

19           Q.       Did Bob Gold respond in any way  
20   to this text message?

21           A.       Later on in the day he called.

22           Q.       Later on Sunday, February 5th?

23           A.       Correct.

24           Q.       Can you estimate for me roughly  
25   what time that would have been?



1           A.       No. I could look back at my  
2 phone and try to figure it out, but not here  
3 right now.

4           Q.       Can you tell me whether it was  
5 early afternoon, mid-afternoon, late  
6 afternoon?

7           A.       It was -- I can tell you it was  
8 on Sunday, but I can't tell you early -- the  
9 time when an incident like this is going on,  
10 time goes by that quick.

11          Q.       Can you describe for me the  
12 conversation that you had with Bob Gold when  
13 you called you back on February 5, 2023?

14          A.       The basics of it were, VCM is  
15 normally shipped unstabilized in pipelines.  
16 Normally it's shipped in a stabilized or  
17 inhibited form in transportation.

18                   The material that was involved  
19 in the fire, he'd seen it on the video -- on  
20 TV.

21                   I asked him point-blank, do you  
22 think polymerization could be occurring, and  
23 he confirmed, yes, in his opinion, yes,  
24 polymerization could be occurring.

25          Q.       What temperature data did you

1 give Bob Gold to allow him to reach that  
2 conclusion?

3 A. Zero.

4 Q. What pressure data did you give  
5 Bob Gold to allow him to reach that  
6 conclusion?

7 A. Zero.

8 Q. What specific data or  
9 observations did you give Bob Gold that  
10 allowed him to reach that conclusion?

11 MR. BRAGA: Object.

12 THE WITNESS: The incident  
13 occurred on Friday evening. There was  
14 massive fire. Cars were in pool fires  
15 for extended periods of time. PRDs  
16 were operating. PRDs settled out for  
17 a period of time. I don't remember  
18 what -- exactly how long that was.  
19 And then one PRD went off for  
20 70 minutes.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Were there any other  
23 observations or data you specifically recall  
24 giving Bob Gold during that conversation?

25 A. Just what we were seeing, the

1 damage we were seeing on the cars.

2 Q. And Bob Gold told you  
3 polymerization could be occurring.

4 Right?

5 A. He felt like it could be  
6 occurring, yes, sir.

7 Q. He did not say it is occurring.  
8 Right?

9 A. Correct.

10 Q. He did not say that it  
11 definitely had already occurred.

12 Right?

13 A. Polymerization could be  
14 occurring.

15 Q. As in it was a possibility.  
16 Right?

17 A. Correct.

18 Q. Not a certainty?

19 A. Yes, sir.

20 Q. Between this telephone  
21 conversation that we just discussed and the  
22 vent and burn on February 6th, did you have  
23 any other conversations with Bob Gold  
24 regarding the VCM in the derailed tank cars?

25 A. No, sir.

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1 Q. And that includes conversations  
2 over the phone, e-mail, text. None -- no  
3 others?

4 A. No, sir.

5 Q. Do you recall whether, when you  
6 had the conversation with Bob Gold, you had  
7 access to temperature and pressure data from  
8 any of the cars?

9 A. We only had pressure on one  
10 car. We couldn't get up to get accurate  
11 temperature and pressure on four of the five  
12 cars.

13 Q. And this is at the time of the  
14 Bob Gold conversation.

15 Right?

16 A. Pretty much throughout the  
17 entire incident, yes, sir.

18 Q. And to confirm, you didn't  
19 share that one pressure data that you had  
20 with him.

21 Right?

22 A. I don't remember.

23 Q. When Bob Gold worked at  
24 Westlake, do you know how Westlake would  
25 stabilize VCM for shipment?

1           A.       Bob was an emergency responder  
2     for Westlake, and that's pretty much all I  
3     know about Bob's time with Westlake.

4           Q.       But fair to say it didn't come  
5     up in the course of this conversation we've  
6     been referring to, how Westlake would  
7     stabilize its VCM for transportation?

8           A.       No, sir.

9                   MR. LEVINE:   Objection.

10          QUESTIONS BY MR. GOMEZ:

11          Q.       And there was also no  
12     conversation with Bob Gold during this  
13     telephone call about the different methods  
14     for stabilization.

15                   Right?

16          A.       That's correct.

17          Q.       And there was no conversation  
18     about the significance, if any, of the  
19     different methods for stabilization in terms  
20     of the potential for polymerization.

21                   Right?

22          A.       Correct.

23          Q.       You also mentioned another  
24     conversation with, I think it was, a chemist  
25     from a Class I railroad.

1 Is that correct?

2 A. Retired, yes, sir.

3 Q. And what was the name of that  
4 person?

5 A. Pat Student.

6 Q. Can you spell that last name,  
7 please?

8 A. S-t-u-d-e-n-t.

9 Q. Pat Student.  
10 And just briefly, how do you  
11 know Pat Student?

12 A. He's a mentor of mine. He  
13 worked for the Missouri Pacific Railroad, and  
14 he was a customer of mine since 1981.

15 Q. Is Pat Student currently  
16 employed by any railroad?

17 A. He's retired.

18 Q. How long has he been retired?

19 A. I don't remember. A long time.

20 Q. And what was this -- you said  
21 he was a chemist, but do you know what his  
22 job role was at Missouri Pacific Railroad?

23 A. He was a HAZMAT responder when  
24 I first got to know him.

25 Q. When you say that he is -- "he"

1     being Mr. Student, was a chemist, was he a  
2     formally educated chemist?

3             A.       I do not know.

4             Q.       So what leads you to believe he  
5     was a chemist?

6             A.       He told me.

7             Q.       He --

8             A.       Told me.

9             Q.       He told you that he was a  
10    chemist?

11            A.       (Witness nods head.)

12            Q.       And when did this conversation  
13    with Mr. Student occur?

14            A.       I met him in 1981. I got to  
15    know him. He was a mentor of mine in the  
16    emergency response business. I can't tell  
17    you what day, what time, anything about --  
18    other than he is a resource of mine that I  
19    bounce ideas off of if I have a problem.

20            Q.       That was a bad question. I  
21    meant in terms of the East Palestine  
22    derailment.

23                    When was the conversation that  
24    you had with Mr. Student about the East  
25    Palestine --

1 A. Sunday night --

2 Q. -- derailment?

3 A. Late --

4 MR. BRAGA: Let him finish his  
5 question first.

6 THE WITNESS: Sorry.

7 Ask the question again.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Sure.

10 The conversation that you  
11 referenced with Mr. Student, when did it  
12 occur in the course of your response to the  
13 East Palestine derailment?

14 A. Late Sunday night.

15 Q. And can you describe for me  
16 what you remember of that conversation?

17 A. It was a discussion about the  
18 decision made to vent and burn these cars.

19 Q. And what did you tell  
20 Mr. Student about that decision?

21 A. We talked about the damage  
22 assessment. We talked about the events that  
23 led up to the decision to be made -- that was  
24 made to vent and burn the cars, what we were  
25 seeing, and needed his opinion on were we



1 making the right decision.

2 Q. And what was the opinion that  
3 he ultimately expressed to you?

4 A. That he agreed.

5 Q. You said this conversation was  
6 late in the evening on Sunday.

7 Are you able to estimate a  
8 time?

9 A. You can go back to my phone.  
10 It was somewhere around ten o'clock.

11 Q. By that point in time, ten  
12 o'clock on Sunday, February 5th, responders  
13 were monitoring the temperature on the  
14 derailed railcars.

15 Right?

16 A. Yes, sir.

17 Q. Did you provide Mr. Student  
18 with those temperature readings?

19 A. There's a lot of discussion  
20 about temperature and temperature readings  
21 that were being taken. My concern was the  
22 temperatures, because we were not getting  
23 accurate readings of the core temperature of  
24 the product. I was suspect that they were  
25 getting -- they weren't accurate.

1           Q.       Whether you believe them to be  
2 accurate or not, did you share the readings  
3 that you had with Mr. Student during this  
4 conversation on Sunday, February 5th?

5           A.       In general terms, yes.

6           Q.       Did you give him the specific  
7 numbers?

8           A.       I gave him general numbers.

9           Q.       When you say "general numbers,"  
10 what does that mean?

11          A.       150s to 160s to 180s.

12          Q.       So you did not give him the  
13 specific temperature readings at each hour  
14 that they were taken.

15                   Right?

16          A.       That is correct.

17          Q.       You did not give him the trend  
18 of the temperatures?

19          A.       That is correct.

20          Q.       Did you give Mr. Student any  
21 pressure readings that you might have had?

22          A.       Yes.

23          Q.       And what pressure readings were  
24 those?

25          A.       60. Pressure reading. Single.

1 Individual.

2 Q. Single reading.

3 You didn't give Mr. Student any  
4 corresponding pressure reading based off of  
5 the vapor pressure curve that we discussed  
6 earlier.

7 Right?

8 A. I had a pretty good indication  
9 that Mr. Student knew exactly where the  
10 pressures would be. Should be.

11 Q. You understood that if you gave  
12 Mr. Student general temperatures, he would  
13 understand what the corresponding pressure  
14 for VCM would be?

15 A. He's a pretty smart guy, yes,  
16 sir.

17 Q. Did you tell Mr. Student that  
18 at the time of that conversation, the evening  
19 of Sunday, February 5th, the product  
20 manufacturer, Oxy Vinyls, had concluded  
21 polymerization was not occurring?

22 MR. LEVINE: Objection.

23 THE WITNESS: We had a  
24 discussion about the conflicting  
25 information we were receiving from Oxy

1 personnel in Dallas.

2 QUESTIONS BY MR. GOMEZ:

3 Q. And did that information  
4 include the conclusion that polymerization  
5 was not occurring?

6 A. That was some of the  
7 information that we were conflicted with.

8 Q. Okay. And what was  
9 Mr. Student's response to that specific piece  
10 of information?

11 A. He didn't understand why  
12 somebody in Dallas would say that  
13 polymerization was not occurring.

14 Q. Did he explain that any  
15 further?

16 A. No, sir.

17 Q. Did you ask him to explain that  
18 any further?

19 A. No, sir.

20 Q. So he told you that he was  
21 surprised by that statement?

22 Is that fair?

23 A. That's correct.

24 Q. And you didn't inquire any  
25 further as to why that might be the case?

1           A.           He was inquisitive as I was.  
2   We didn't know why somebody would say based  
3   on the conditions that we were seeing that  
4   polymerization was not occurring.

5           Q.           If Mr. Student was a chemist,  
6   could you have asked him for the chemical  
7   explanation of what was likely going on in  
8   those railcars?

9                       MR. BRAGA:   Objection.

10                  THE WITNESS:   You're asking me  
11                   to speculate, and I can't.   I don't  
12                   know Pat was thinking.   We were having  
13                   a conversation about the decision that  
14                   was made to vent and burn these cars.

15   QUESTIONS BY MR. GOMEZ:

16           Q.           And I don't want you to  
17   speculate about what Mr. Student was  
18   thinking.   But if he is a chemist, you could  
19   have asked him for a chemical explanation of  
20   what's happening in the cars.

21                       Right?

22                       MR. LEVINE:   Objection.

23                       THE WITNESS:   I could.

24   QUESTIONS BY MR. GOMEZ:

25           Q.           And you didn't do that?

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1           A.       I did not.

2           Q.       These two conversations that  
3 we've been discussing, the first with Bob  
4 Gold and the second with Pat Student, at any  
5 time did you share that -- share the -- those  
6 discussions with NS personnel?

7           A.       It most likely came up in  
8 discussions, yes.

9           Q.       These two conversations, the  
10 one with Bob Gold and the one with Pat  
11 Student, did you discuss the contents of  
12 those discussions with anyone at incident  
13 command?

14          A.       You have to understand the  
15 hierarchy of control command, how an incident  
16 command structure works.

17                   We were a support structure to  
18 the NS. The NS communicated directly with  
19 incident command.

20          Q.       Okay. So you yourself did not  
21 communicate directly with the folks in  
22 incident command?

23          A.       Only during the vent and burn  
24 operation.

25          Q.       During the vent and burn

1 operation, did you happen to mention anything  
2 about the conversation with Bob Gold or Pat  
3 Student?

4 A. During the vent -- the  
5 communications with incident command during  
6 the vent and burn operation, it was strictly  
7 to request permission to initiate and feed  
8 information once the vent and burn was done.

9 Q. So other than that conversation  
10 to get permission to initiate the vent and  
11 burn, you did not have direct communication  
12 with incident command?

13 A. That is correct.

14 Q. So to the extent that incident  
15 command was aware of the discussions you had  
16 with Bob Gold and Pat Student, that would  
17 have had to come from someone at NS?

18 A. It would have had --

19 MR. LEVINE: Objection. Sorry.

20 THE WITNESS: That

21 communication would have had to come  
22 through NS, yes, sir.

23 QUESTIONS BY MR. GOMEZ:

24 Q. NS having learned it from you  
25 at some point, obviously?

1           A.       Correct.

2                   MR. LEVINE:   Objection.

3   QUESTIONS BY MR. GOMEZ:

4           Q.       How about Oxy?   At any point in  
5   time did you discuss the information that you  
6   received from Bob Gold or Pat Student with  
7   any employee of Oxy?

8           A.       It was brought up in  
9   conversations, trying to determine if  
10   polymerization was occurring.   We have to --  
11   we have -- in this business, we have to rely  
12   on a lot of information from a lot of  
13   different people when you start getting  
14   conflicting information.

15          Q.       What do you recall specifically  
16   about sharing the statements made by Bob Gold  
17   or Pat Student with employees of Oxy?

18          A.       We've spoken to other former  
19   manufacturers of VCM, and they don't feel  
20   that -- or they feel that polymerization  
21   could be occurring in these cars.

22          Q.       And what was the response from  
23   Oxy?

24          A.       I don't remember.

25          Q.       But Oxy never changed its



1 opinion about polymerization not occurring.

2 Right?

3 MR. LEVINE: Objection.

4 THE WITNESS: They -- there was  
5 three folks on-site, and at least two  
6 of those folks, Oxy folks, on-site  
7 felt that there was a possibility of  
8 polymerization occurring.

9 QUESTIONS BY MR. GOMEZ:

10 Q. And they expressed that to you?

11 A. Yes.

12 Q. Do you remember their names?

13 A. Justin and, I believe, Steve.

14 Q. Justin Cox.

15 Right?

16 A. Correct.

17 Q. Steve Smith.

18 Right?

19 A. Correct.

20 Q. And if you recall, let's say,  
21 Steve Smith expressing to you that  
22 polymerization could be occurring, do you  
23 also recall him saying that he's not an  
24 expert in polymerization?

25 A. That's correct.

1 Q. And you recall him saying that  
2 he would have to check with the experts on  
3 polymerization back in Dallas?

4 A. He said things along those  
5 lines, yes, sir.

6 Q. And he in fact did check with  
7 the experts back in Dallas about  
8 polymerization.

9 Right?

10 MR. LEVINE: Objection.

11 MR. BRAGA: Objection.

12 THE WITNESS: I guess.

13 QUESTIONS BY MR. GOMEZ:

14 Q. He told you that he did.

15 Right?

16 MR. LEVINE: Objection.

17 THE WITNESS: We had several  
18 discussions, multiple times during  
19 those days, that there was conflicting  
20 information.

21 QUESTIONS BY MR. GOMEZ:

22 Q. And each time that you brought  
23 that up to him, he reiterated the conclusion  
24 from the product manufacturers that  
25 polymerization was not occurring.

1 Right?

2 MR. BRAGA: Objection.

3 MR. LEVINE: Objection.

4 THE WITNESS: That's correct.

5 QUESTIONS BY MR. GOMEZ:

6 Q. Mr. Day, we can take down this  
7 document.

8 We've taken for granted a  
9 little bit of the timeline of your  
10 involvement in the derailment, so I kind of  
11 want to go back to the beginning there.

12 Am I correct that you were not  
13 contacted by Norfolk Southern to respond to  
14 the derailment; rather, you first reached out  
15 to Norfolk Southern?

16 A. Correct.

17 Q. And that would have been the  
18 night of February 4th.

19 Right?

20 A. Saturday the 4th, yes.

21 Q. And I think you read -- you  
22 reached out specifically to David  
23 Schoendorfer?

24 A. Dave Schoendorfer, yes, sir.

25 Q. Did you have a preexisting

1 relationship with Mr. Schoendorfer?

2 A. Yes, sir.

3 Q. Can you describe that for me?

4 A. We were friends.

5 Q. Personal friends?

6 A. I believe so.

7 Q. Did you have any professional  
8 relationship with Mr. Schoendorfer?

9 A. We worked for the Norfolk  
10 Southern.

11 Q. And on those jobs, was Dave  
12 Schoendorfer one of your points of contact?

13 A. Yes, sir.

14 Q. Did any of the jobs you worked  
15 for NS including Dave Schoendorfer involve  
16 VCM?

17 A. I don't remember specifically  
18 VCM. We've done quite a bit of work for the  
19 Norfolk Southern.

20 Q. And what prompted you to  
21 proactively reach out to Mr. Schoendorfer?

22 A. As I said before, this  
23 community is very, very small. When one  
24 person has an issue, a big problem, as East  
25 Palestine was, it kind of affects us all. We

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1 all watch, listen and try to gather  
2 additional information.

3 I was mowing my pasture and  
4 heard a news report that the fire was still  
5 going on Saturday afternoon, and that's why I  
6 sent the text to Dave asking what -- besides  
7 plastic pellets and vinyl liquid, what else  
8 was on fire.

9 Q. At the time you reached out to  
10 Mr. Schoendorfer via text, did you know that  
11 SPSI was on-site?

12 A. Yes, sir.

13 Q. Did you know that Mr. McCarty  
14 was on-site?

15 A. If SPSI was on-site and -- yes.

16 Q. If SPSI is there, Mr. McCarty  
17 is there?

18 A. Most likely.

19 Q. And in the past, has  
20 Mr. McCarty reached out to you for  
21 assistance?

22 A. Yes, sir.

23 Q. But he didn't reach out to you  
24 for assistance on this derailment.

25 Right?

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1           A.       Hadn't yet, no, sir.

2           Q.       Instead, it was you that  
3 reached out not to Mr. McCarty but to NS?

4           A.       Correct.

5           Q.       And that text message that you  
6 sent to Mr. Schoendorfer, I think you just  
7 said, was with respect to what was -- what  
8 was on fire.

9                   Right?

10          A.       That's correct.

11          Q.       In East Palestine?

12                   And he responded that vinyl  
13 chloride was on fire.

14                   Right?

15          A.       VCM, yes, sir.

16          Q.       And take me through kind of  
17 what happened that ultimately transitioned  
18 that conversation from talking about what was  
19 on fire to you getting asked to come up  
20 on-scene.

21          A.       I sent the text. He replied  
22 back and within -- I replied back, I believe,  
23 one more time with something. And within a  
24 few minutes, he called and said, just getting  
25 ready to call you. We got VCM cars on fire,

1 and we need additional assistance -- we need  
2 more eyes on it. I need Terry, Bobby and  
3 Chip to fly up here and put equipment on the  
4 road.

5 Q. Terry is Terry Rockwell?

6 A. Correct.

7 Q. Right?

8 Chip is Charles Day, you.

9 A. Correct.

10 Q. Right.

11 And you mentioned Bobby?

12 A. Bobby Breed.

13 Q. Bobby Breed. Okay.

14 Also employed by SRS?

15 A. Yes, sir.

16 Q. In the course of that  
17 conversation with Mr. Schoendorfer, was there  
18 any discussion about you or SRS's experience  
19 with polymerizing VCM?

20 A. Specifically he wanted  
21 additional help with compressed gas cars on  
22 fire, with VCM cars on fire. We didn't  
23 really discuss polymerization potential that  
24 I remember. But in a subsequent  
25 conversation, there was.

1 Q. There was discussion about  
2 polymerization?

3 A. There was discussion about  
4 polymerization.

5 Q. Did Mr. Schoendorfer mention  
6 during that phone call the evening of  
7 February 4th the potential for a vent and  
8 burn?

9 A. The discussion that -- there  
10 was discussion some -- something around the  
11 line of potential for a vent and burn.

12 Q. Okay. And that would have been  
13 the evening of Sunday -- or I'm sorry,  
14 Saturday, February 4th.

15 Right?

16 A. Correct.

17 Q. Before there was any  
18 temperature readings of the car.

19 Right?

20 A. Correct.

21 Q. And before there were pressure  
22 readings of the car as well?

23 A. I don't know.

24 Q. And I shouldn't say "readings."  
25 Reading, right? Single



1 reading.

2 A. Correct.

3 Q. So you and SRS eventually  
4 mobilized and got to East Palestine.

5 Right?

6 A. That's correct.

7 Q. I think you got to -- you got  
8 to the Pittsburgh area around midnight?

9 A. Correct.

10 Q. But didn't actually arrive  
11 on-scene until early the following morning.

12 Right?

13 A. That's correct.

14 Q. So roughly 6 a.m.,  
15 February 5th?

16 A. Correct.

17 Q. Can you tell me a little bit  
18 about the preparations that you undertook to  
19 get ready to get on-scene?

20 MR. LEVINE: Objection.

21 THE WITNESS: We gathered up  
22 the personnel, the equipment, got the  
23 equipment on the road. Got on a  
24 plane. Flew up there.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. What equipment did you bring  
3 with you?

4 A. We have a 48-foot response  
5 truck that -- filled with pumps and hoses and  
6 compressors and protective clothing,  
7 monitoring equipment. And that's pretty much  
8 it. Just a lot of stuff.

9 Q. So it's like the standard  
10 load-out that you have?

11 A. Yes, sir.

12 Q. Okay. Did you bring any  
13 equipment based specifically on what you  
14 understood to be occurring at the scene?

15 MR. LEVINE: Objection.

16 THE WITNESS: I don't  
17 understand the question.

18 QUESTIONS BY MR. GOMEZ:

19 Q. Sure.

20 Did you bring, for example, any  
21 tools or equipment specific to flammable gas  
22 tank cars that are derailed for either  
23 monitoring or testing or anything along those  
24 lines?

25 MR. LEVINE: Objection.

1 THE WITNESS: We brought  
2 response equipment.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Did you speak to anybody other  
5 than Mr. Schoendorfer to get information  
6 about what happened at the derailment site  
7 before you arrived on-scene that following  
8 morning?

9 A. Robert Wood.

10 Q. When did the conversation with  
11 Mr. Wood occur?

12 A. Around the time with  
13 Mr. Schoendorfer.

14 Q. And can you describe for me the  
15 nature of that conversation?

16 MR. LEVINE: Objection.

17 THE WITNESS: From what I can  
18 remember, it was, we need some WS-27,  
19 which is an Acronel -- acrylate  
20 killer, odor control material that's  
21 manufactured by a company in south  
22 Texas.

23 What he was seeing, fires that  
24 were going on and that the PRD on one  
25 of the three VCM cars had been going

1 off for the last -- a period of time.

2 QUESTIONS BY MR. GOMEZ:

3 Q. Was there any discussion at  
4 that point in time with Mr. Wood about vent  
5 and burn?

6 A. No, sir, not that I remember.

7 Q. When you eventually arrived  
8 on-site, SRS was working as a subcontractor  
9 for SPSI.

10 Is that correct?

11 A. That's correct.

12 Q. And if I recall correctly, that  
13 was because of some contract issues with the  
14 acquisition of SRS?

15 A. That's -- that -- very good,  
16 yes, sir.

17 Q. Right?

18 SRS had been acquired by  
19 US Ecology?

20 A. So SRS was acquired by NRC.  
21 NRC was acquired by US Ecology. US Ecology  
22 was acquired by Republic Services.

23 Q. And maybe I'm oversimplifying  
24 it, but the issue was that there wasn't a  
25 contract between NS and Republic Services in

1 place at the time.

2 Right?

3 A. It may have expired. There was  
4 some kind of contractual issue.

5 Q. But regardless, you agreed to  
6 be on-site as a sub for SPSI.

7 Correct?

8 A. Yes.

9 MR. BRAGA: When you get to a  
10 good breaking point.

11 MR. GOMEZ: Yeah. Maybe five  
12 minutes?

13 MR. BRAGA: Sure.

14 QUESTIONS BY MR. GOMEZ:

15 Q. As a subcontractor for SPSI,  
16 can you describe for me kind of the hierarchy  
17 of decision-making between the two entities,  
18 SRS and SPSI?

19 A. So SRS and SPSI are fierce  
20 competitors. We -- the customer base is  
21 fairly limited, but -- we're fierce  
22 competitors when we're trying to get work,  
23 but once one lands work and needs assistance,  
24 we work -- you never know where one stops and  
25 the other one starts. We work very much

1 hand-in-glove.

2 Q. So would you characterize it as  
3 once you arrived on-site, joint  
4 decision-making between SPSI and SRS?

5 MR. LEVINE: Objection.

6 THE WITNESS: SPSI took care of  
7 their folks; we took care of our  
8 folks. And when decisions needed to  
9 be made, obviously we were both  
10 supporting the Norfolk Southern.

11 QUESTIONS BY MR. GOMEZ:

12 Q. So you were both -- "you" being  
13 SPSI and SRS -- were both supporting  
14 decisions ultimately made by Norfolk  
15 Southern.

16 Right?

17 A. Correct.

18 MR. LEVINE: Objection.

19 QUESTIONS BY MR. GOMEZ:

20 Q. So the two entities are working  
21 together, but as far as decision-making in  
22 East Palestine responding to the derailment,  
23 it is your understanding that Norfolk  
24 Southern was making those decisions?

25 A. Anything -- any decisions that

1 needed to be made or work that needed to be  
2 done, it would come down, and it would be  
3 split out whoever had folks available.

4 Q. And would that include the  
5 decision to conduct the vent and burn?

6 A. The decision to make -- to do  
7 the -- perform the vent and burn was from the  
8 technical group to the Norfolk Southern to  
9 the incident commander.

10 Q. When you say -- you've used  
11 "technical group" a couple of times.

12 Is that just SPSI and SRS?

13 A. So the -- in these kinds of  
14 incidents when Mr. Schoendorfer and I spoke,  
15 they wanted SRS and SPSI to focus on the VCM  
16 cars and the isobutylene car, compressed gas  
17 cars, and the other contractors to focus on  
18 the general service cars and the spill  
19 cleanup.

20 Within that -- when SPSI and  
21 SRS came together, we formed somewhat of a  
22 technical group that were focused strictly on  
23 the VCM.

24 Drew had a lot of other  
25 operations going on. He had folks handling

1 other parts.

2 So the technical group was  
3 SPSI, SRS, the Norfolk Southern, OxyChem --  
4 Oxy Vinyls, excuse me, to discuss a path  
5 forward for the VCM cars.

6 Q. So with respect specifically to  
7 the vent and burn, the technical group that  
8 you just described made the recommendation to  
9 Norfolk Southern to conduct the vent and  
10 burn.

11 Right?

12 A. That's correct.

13 Q. And then Norfolk Southern  
14 decided to take that recommendation to the  
15 incident command for approval?

16 MR. LEVINE: Objection.

17 THE WITNESS: That's correct.

18 That's correct.

19 MR. GOMEZ: We can stop here.

20 Take a break.

21 MR. BRAGA: Okay.

22 VIDEOGRAPHER: All right. The  
23 time is 11:23 a.m., and we're going  
24 off the record.

25 (Off the record at 11:23 a.m.)



1 VIDEOPHOTOGRAPHER: The time is  
2 11:37 a.m., and we're back on the  
3 record.

4 QUESTIONS BY MR. GOMEZ:

5 Q. Mr. Day, we were talking before  
6 the break about when you first arrived  
7 on-scene. That was the morning of  
8 February 5th.

9 Right?

10 A. Yes, sir.

11 Q. At approximately 6 a.m.  
12 Does that sound fair?

13 A. Somewhere around there, yes,  
14 sir.

15 Q. At the time you arrived  
16 on-scene, am I correct that there were no  
17 more active pool fires?

18 A. No, sir.

19 Q. Okay. How many pool fires were  
20 there? Or where were the pool fires, I  
21 should say?

22 A. The pool fires were to the west  
23 of four VCM cars, coming up on the fifth  
24 toward the Leake Oil side of the incident.

25 Q. Okay. Were any of the five VCM

1 railcars, at the time you arrived on-scene,  
2 impinged by the pool fires?

3 MR. BRAGA: Object to the form.

4 THE WITNESS: The pile of four  
5 VCM cars, the three that were -- had  
6 active -- two of the three that had  
7 active fires from the protective  
8 housings were up against cars that  
9 were blocking them -- some portion of  
10 them were getting blocked by another  
11 car.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Okay. When you say "blocked by  
14 another car," what -- blocked from the fire?

15 A. I think it was a plastic pellet  
16 car that was between the majority of the pool  
17 fire and the VCM cars.

18 Q. Okay. At the time you arrived  
19 on-scene at -- the early morning of  
20 February 5th, was there no longer concern for  
21 a BLEVE in the five vinyl chloride-containing  
22 cars?

23 MR. BRAGA: Objection.

24 THE WITNESS: There's always  
25 still a concern for BLEVE.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Okay. Why is there always  
3 still a concern for BLEVE?

4 A. Because the nature of the  
5 product and the heat that's already been  
6 applied to the cars.

7 Q. So between when you arrived the  
8 morning of February 5th to the time of the  
9 vent and burn, there was always a concern for  
10 a BLEVE?

11 A. Correct.

12 Q. Did you communicate that  
13 concern to anyone at Oxy Vinyls?

14 A. It's one of those assumed  
15 things. When you have cars in pool fires, in  
16 close proximity to pool fires, exposed to  
17 elevated heat, that a potential for a BLEVE  
18 is there.

19 Q. So you may not have  
20 specifically discussed it with them, but  
21 given the conditions, you felt they would  
22 know it was an issue --

23 A. Yes.

24 Q. -- to be aware of?

25 A. Yes, sir.

1 Q. A BLEVE is different from a  
2 failure because of polymerization of VCM.

3 Right?

4 MR. LEVINE: Objection.

5 THE WITNESS: A BLEVE is a  
6 Boiling Liquid Expanding Vapor  
7 Explosion.

8 Basically the car comes apart  
9 in three pieces. You have a rocket,  
10 you have a dance floor, and you have  
11 the end of the car.

12 A polymerization can create  
13 a -- an explosion due to  
14 overpressuring building up and  
15 basically the car coming apart with  
16 lots of shrapnel.

17 QUESTIONS BY MR. GOMEZ:

18 Q. They're both explosions, but  
19 they happen for different reasons.

20 Is that fair?

21 MR. LEVINE: Objection.

22 THE WITNESS: Potato, potato.

23 QUESTIONS BY MR. GOMEZ:

24 Q. I'll take that.

25 MR. BRAGA: Hakuna Matata, too.

1 QUESTIONS BY MR. GOMEZ:

2 Q. When you arrived on-scene, were  
3 any of the PRDs on the vinyl chloride cars  
4 still activating?

5 A. We had active fires in the  
6 protective housing of three cars.

7 Q. Okay. And does that mean that  
8 the PRDs were activating? Cycling?

9 A. We had three cars with active  
10 fires inside the protective housings.

11 Q. Okay. I'm not trying to be  
12 obtuse. I want to make sure I understand  
13 this.

14 Your testimony is that there  
15 were fires in the protective housings.

16 My question is, were the PRDs,  
17 the pressure relief devices, were they  
18 cycling? Were they actually letting out  
19 product?

20 A. I'll say it one more time this  
21 way. We had active fires in the protective  
22 housings of three of the VCM cars. I  
23 can't -- couldn't tell you where those fires  
24 were coming from, but I couldn't {sic} tell  
25 you that we had fire in three protective

1 housings.

2 Q. Okay. So you couldn't tell if  
3 the PRDs were activating because of fire?

4 A. There were three cars with  
5 protective housings on fire, yes, sir.

6 Q. What did you learn about, when  
7 you arrived on-scene, the -- what I'll call  
8 the extended activation of the PRD on one of  
9 the vinyl chloride cars the evening before?

10 Let me ask you this way. When  
11 you arrived on-scene, were you told that the  
12 night before there was an extended activation  
13 of one of the PRDs on the vinyl chloride  
14 cars?

15 A. Yes, sir.

16 Q. And was that the third vinyl  
17 chloride car?

18 A. I believe that was the third --  
19 yes, the third VCM car.

20 Q. And that -- well, the PRDs had  
21 been cycling from the late evening, early  
22 morning of February 4th, through the morning  
23 of February 4th {sic} before eventually  
24 stopping.

25 Right?

1 MR. LEVINE: Objection.

2 THE WITNESS: I'm trying to get  
3 my days correct.

4 So the fires started on the  
5 night of the 4th, and the PRDs  
6 operated as designed through that  
7 night, the 5th, and into the morning  
8 of the 5th, yes.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Into the morning of the 5th?

11 A. Correct.

12 Q. Okay. The derailment occurred  
13 on the 3rd.

14 A. So the derailment occurred on  
15 the 3rd.

16 Q. Yeah.

17 A. The fires were burning all day  
18 the 4th. When we got on-site on the 5th, we  
19 had protective housings on fire on three of  
20 the five VCM cars.

21 Q. Okay. Tell me what was  
22 described to you about the extended  
23 activation of the PRD on that third vinyl  
24 chloride car February 4th before you arrived  
25 on-site.

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1           A.       There was a -- they were  
2     planning on doing some offensive operations,  
3     and the PRD on one of the VCM cars operated  
4     for 70 minutes.

5           Q.       And it was the activation of  
6     that PRD, followed by it stopping working,  
7     that led SPSI to believe that the  
8     polymerization was occurring.

9                   Is that correct?

10           MR. BRAGA: Object to the form.

11           THE WITNESS: That PRD -- the  
12     PRD -- all the PRDs were operating as  
13     designed throughout the 4th -- for  
14     several hours on the 4th, and  
15     everything settled down. And then  
16     this one -- this one car went off for  
17     70 minutes, which is uncharacteristic  
18     of what everybody's been observing  
19     before that time.

20     QUESTIONS BY MR. GOMEZ:

21           Q.       So I want to make sure I  
22     understand this correctly.

23                   Was it the extended activation  
24     of the PRD on this one car compared to the  
25     other PRDs calming down or slowing down that



1     you understood led SPSI to believe  
2     polymerization was occurring?

3                     MR. BRAGA:    Objection.

4                     MR. LEVINE:   Objection.

5                     THE WITNESS:   The belief that  
6                     polymerization was occurring takes us  
7                     back to the training that we get in  
8                     polymerizable materials that if your  
9                     PRD operates and there is no  
10                    aggressive changes made, large volumes  
11                    of water pumped onto cars, the cooling  
12                    effect of the cars, and a PRD were to  
13                    go off and then stop suddenly, that is  
14                    a telltale indicator that you have --  
15                    you could have polymerization  
16                    occurring.

17    QUESTIONS BY MR. GOMEZ:

18                    Q.       Did you ultimately concur, when  
19                    you arrived on-scene, with SPSI in their  
20                    determination that polymerization could be  
21                    occurring in the cars based off the behavior  
22                    of the PRDs?

23                    A.       Absolutely.

24                    Q.       And at that point in time, when  
25                    you arrived on-scene the morning of

1 February 5th, had SPSI already concluded that  
2 there was a need for a vent and burn based on  
3 the cars' condition?

4 MR. BRAGA: Objection.

5 THE WITNESS: There's a  
6 hierarchy. There's a decision-making  
7 process that leads us to all different  
8 things before you ever get to vent and  
9 burn.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Okay. And I appreciate that.

12 My question is, by the time you  
13 arrived on-scene that morning, Sunday,  
14 February 5th, had SPSI already gone through  
15 that decision-making tree and reached the  
16 conclusion that there was a need for a vent  
17 and burn?

18 MR. BRAGA: Objection.

19 THE WITNESS: I can't answer  
20 that question because I wasn't there.

21 QUESTIONS BY MR. GOMEZ:

22 Q. When was it that anyone from  
23 SPSI first communicated to you their belief  
24 that there was a need for a vent and burn?

25 A. There was concurrence during

1 several of the technical group committee  
2 meetings, group meetings, in their trailer  
3 after we were already on-scene.

4 Q. And the technical group, again,  
5 was members of SRS.

6 Right? Yes?

7 A. Yes.

8 Q. Members of SPSI.

9 Right?

10 A. Yes.

11 Q. And who were the other members?  
12 I'm sorry.

13 A. Norfolk Southern.

14 Q. Norfolk Southern?

15 A. And once OxyChem -- Oxy Vinyls  
16 showed up, Oxy.

17 Q. So it's your testimony that  
18 Oxy, through its representatives, were  
19 members of that technical group?

20 A. That is correct.

21 Q. Was that ever communicated to  
22 them?

23 A. "To them." Define --

24 Q. Were the three individuals from  
25 Oxy who were on-scene told that they were

1 members of this technical group?

2 A. They attended some of the  
3 meetings.

4 Q. Okay. But were they told that  
5 they were part of the technical group?

6 A. They attended some of the  
7 meetings.

8 Q. Were they told that they had  
9 input into the decision to vent and burn?

10 A. They were part of the technical  
11 group. They were -- they attended the  
12 meetings.

13 Q. So --

14 A. Some of the meetings.

15 Q. So if I understand your answer  
16 correctly, by virtue of being in those  
17 meetings, they had a voice in the decision to  
18 vent and burn.

19 Is that your testimony?

20 A. They were members of that  
21 group, yes, sir.

22 Q. Is there a reason why you can't  
23 say whether they were a member of the  
24 technical group?

25 MR. BRAGA: Objection.

1 THE WITNESS: They were in the  
2 meetings. Why would you -- if you  
3 weren't a member of the group, why  
4 would you be attending the meetings.

5 QUESTIONS BY MR. GOMEZ:

6 Q. So they had as much say in what  
7 happened once they arrived on-site as SPSI,  
8 SRS and Norfolk Southern.

9 Is that your testimony?

10 MR. BRAGA: Objection.

11 THE WITNESS: You're absolutely  
12 correct.

13 QUESTIONS BY MR. GOMEZ:

14 Q. And who communicated that to  
15 these folks from Oxy who were on-site?

16 MR. FUKUMURA: Objection.

17 THE WITNESS: Several people  
18 invited them every time -- hey, we're  
19 having a meeting, or, hey, we're  
20 having a meeting.

21 QUESTIONS BY MR. GOMEZ:

22 Q. If the folks from Oxy were  
23 members of this technical group and had as  
24 much say as SPSI, SRS and Norfolk Southern,  
25 then why weren't they invited to all the

1 meetings that you had?

2 MR. BRAGA: Objection.

3 THE WITNESS: They were invited

4 to all the meetings.

5 QUESTIONS BY MR. GOMEZ:

6 Q. They were invited to every  
7 meeting?

8 A. You are absolutely correct.

9 Q. They were invited to the  
10 meeting that was had with the governor of  
11 Ohio?

12 A. There were only two members --  
13 three members of the technical group that  
14 were told to be at the meeting with the  
15 governor.

16 Q. Okay. So they weren't at that  
17 meeting.

18 Right?

19 A. I don't know where they were.

20 Q. Were you at that meeting?

21 A. I was.

22 Q. Do you remember them being at  
23 that meeting?

24 A. There were 70-some people in  
25 this IT room or library or something.

1           Q.       What meetings do you recall the  
2 folks from Oxy being invited to that they  
3 didn't attend?

4                   MR. LEVINE:   Objection.

5                   MR. BRAGA:   Objection.

6                   THE WITNESS:   We had meetings.

7           We would -- NS would be there.   Drew,  
8 myself, Terry, the SRS, SPSI folks  
9 were there.   Where is OxyChem.  
10           Somebody call OxyChem.

11                   And they would finally show up.

12           They were doing other things.

13   QUESTIONS BY MR. GOMEZ:

14           Q.       And who would be tasked with  
15 getting in contact with them?

16           A.       Whoever was closest to the  
17 door, because we couldn't get telephone  
18 communications inside the trailer.

19           Q.       Okay.   Just generally speaking,  
20 between February 5th and February 6th, how  
21 did any of the other members of the technical  
22 group, SPSI, SRS and Norfolk Southern, let  
23 the folks from Oxy know that they were about  
24 to have a meeting?

25           A.       Phone calls.

1 Q. So --

2 A. Or we were in close proximity.  
3 Hey, we're going to meet.

4 Q. Going back to the PRDs and the  
5 behavior of the PRDs, it's the training that  
6 tells you and others in the industry that if  
7 they're activating and suddenly stop, despite  
8 circumstances remaining largely the same,  
9 that's an indicator that polymerization could  
10 be occurring.

11 Right?

12 A. I lost track what you were  
13 saying. Say that one more time.

14 Q. No problem.

15 The training that you receive  
16 and others in your industry receive tells you  
17 that if a PRD is activating and then suddenly  
18 stops, but otherwise the conditions of the  
19 railcars remain the same, there's not an  
20 addition of large amounts of water, pool  
21 fires haven't stopped, it's that -- it's that  
22 sudden stopping that indicates polymerization  
23 might be occurring?

24 MR. BRAGA: Objection.

25 THE WITNESS: There is a --



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1           there is a possibility, yes, sir.

2       QUESTIONS BY MR. GOMEZ:

3           Q.       There are other explanations  
4       for a PRD ceasing activation.

5                     Right?

6           A.       There are several reasons, yes,  
7       sir.

8           Q.       Right.

9                     It can be that the product has  
10       auto-refrigerated.

11                    Right?

12          A.       Correct.

13          Q.       It could be that the pressure  
14       has decreased within the vessel.

15                    Right?

16          A.       That's correct.

17          Q.       It could be that the  
18       pressure -- or that the product has been  
19       exhausted.

20                    Right?

21          A.       Correct.

22          Q.       It could be a mechanical  
23       failure of the pressure relief device.

24                    Right?

25          A.       Correct.

1           Q.       So what is it about the  
2 behavior of the PRD in the five vinyl  
3 chloride cars derailed in East Palestine that  
4 led you and SPSI to rule out these other  
5 explanations for their behavior in favor of a  
6 conclusion that it may be polymerizing?

7           A.       The PRDs, everything settled  
8 down. They operated during the fire, the  
9 biggest majority of the fire. They calmed  
10 down. They calmed down for an extended  
11 period of time.

12                   Then one of them went off for  
13 70 minutes, uncharacteristic of all the rest  
14 of the data -- all the information that was  
15 being gathered at the site visually. The PRD  
16 went off for 70 minutes and then stopped.

17                   Un -- it had not done it  
18 before; therefore, there's a high probability  
19 that polymerization was occurring.

20           Q.       Okay. For that specific car,  
21 when it -- when the PRD cycled for 70 minutes  
22 and then suddenly stopped, what data points  
23 allowed you to rule out that it wasn't  
24 because of product exhaustion or a decrease  
25 in pressure within the -- within the tank car

1 as opposed to polymerization?

2 MR. BRAGA: Objection.

3 THE WITNESS: So now we're  
4 getting into the part of the job that  
5 we've got to base a lot of our  
6 decisions on how we're feeling based  
7 on training and communications with a  
8 lot of folks on site and off site.

9 When a PRD goes off for  
10 70 minutes, nothing has changed, we  
11 didn't apply a lot of water to the  
12 car, and it stops going off, with a  
13 material that has the potential for  
14 polymerization, we could be sitting  
15 here and talking about an explosion  
16 that took out half of East Palestine.

17 We can Monday morning  
18 quarterback all we want, but we don't  
19 know. At that point, we do not know.  
20 So we've got to err on the side of  
21 safety of personnel, life safety,  
22 figure out how to stabilize that  
23 incident and get this incident, this  
24 part of the incident, over with.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. And that's what your training  
3 tells you?

4 A. That's what our training tells  
5 us.

6 Q. And what part of your training  
7 tells you that a PRD can activate and  
8 suddenly stop as a result of polymerization?

9 A. Because it can get plugged with  
10 polymer.

11 Q. What training specifically  
12 imparted that information on you?

13 MR. LEVINE: Objection.

14 THE WITNESS: When you're  
15 dealing with polymerizable materials,  
16 if polymer is formed, it can bring  
17 up -- it can plug the PRD. There's  
18 documented evidence where a material  
19 has polymerized, the polymer material  
20 has plugged the PRD, and the car has  
21 blown apart.

22 QUESTIONS BY MR. GOMEZ:

23 Q. Where can I find that  
24 documented evidence?

25 A. Rohm and Haas, Houston, Texas,

1 early '90s. BASF Corporation, Freeport,  
2 Texas, late '90s, early 2000s, on a  
3 caprolactam car.

4 Q. You said Freeport was in the  
5 late '90s, early 2000s?

6 A. Late '90s, early 2000s.

7 Q. In the Rohm and Haas incident,  
8 what was the chemical involved there?

9 A. Crude wash glacial acrylic  
10 acid.

11 Q. And that specific form of  
12 acrylic acid, is that a polymerizable  
13 chemical?

14 A. Yes, sir.

15 Q. Do you know if it shares  
16 chemical properties with vinyl chloride  
17 monomer?

18 A. I do not know.

19 Q. Okay. So you don't know if it  
20 polymerizes in the same way as vinyl chloride  
21 monomer.

22 Right?

23 A. Not a chemist, no, sir.

24 Q. If you're comparing past  
25 incidents to what happened in East Palestine,

1     isn't it important to compare the chemical  
2     properties of the different chemicals at  
3     issue?

4                     MR. LEVINE:   Objection.

5                     MR. BRAGA:   Objection.

6                     THE WITNESS:   The PRDs on those  
7                     cars plugged.   For some reason, the  
8                     PRDs operated very well on four of the  
9                     five cars, or at least three of the  
10                    five cars, and then settled down,  
11                    which is a good indicator that, hey,  
12                    things are kind of getting under  
13                    control.   And then it goes off for  
14                    70 minutes straight, wide open.

15                    The PRD relief pressure -- or  
16                    relief volume is around 37,000  
17                    standard cubic feet per minute, and it  
18                    went off for 70 minutes, which is  
19                    unlike anything that had occurred  
20                    previous.   They were going off for --  
21                    every two minutes for approximately  
22                    30 seconds --

23     QUESTIONS BY MR. GOMEZ:

24                    Q.       Okay.

25                    A.       -- relieving pressure.

1           Q.       If you're using your experience  
2   from past situations involving PRDs getting  
3   plugged up or gummed up from polymerizable  
4   material --

5           A.       Yes, sir.

6           Q.       -- can you agree with me that  
7   it is important to understand the chemical  
8   differences between the chemicals in East  
9   Palestine and the chemicals involved in those  
10   past incidents?

11                   MR. BRAGA:  Objection.

12                   MR. LEVINE:  Objection.

13                   THE WITNESS:  The fact that  
14   polymer is -- was formed, was being  
15   formed, is a potential for the vinyl  
16   chloride, because it is a  
17   polymerizable material, and the other  
18   materials that I've spoke of.  So the  
19   conditions are very right for polymer  
20   to be plugging the PRD.

21   QUESTIONS BY MR. GOMEZ:

22           Q.       The conditions are very right  
23   for VCM to polymerize and plug the PRD.

24                   Is that what you're saying?

25           A.       That's exactly what I'm saying.

1 Q. Okay. So you'll agree with me  
2 that then it's important to understand the  
3 conditions that VCM requires to polymerize.

4 Right?

5 MR. LEVINE: Objection.

6 THE WITNESS: If polymer is  
7 being formed inside the car, that  
8 material can plug the PRD.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Yeah. I understand that.

11 My question is, if you're  
12 thinking that the VCM is polymerizing and  
13 leading the PRDs to gum up, isn't it  
14 important to understand exactly what has to  
15 happen for VCM to polymerize?

16 A. Yes, sir. It's a bit of a  
17 fact, yes, sir.

18 Q. And you're not a chemist.

19 Right?

20 A. I am not.

21 Q. Drew McCarty is not a chemist.

22 A. That is correct.

23 Q. Right?

24 The chemists were in Dallas.

25 Right?



1 MR. LEVINE: Objection.

2 THE WITNESS: I don't know.

3 QUESTIONS BY MR. GOMEZ:

4 Q. You don't know that the team in  
5 Dallas for Oxy Vinyls had chemists on it?

6 A. I did not.

7 Q. Where did you think that they  
8 were coming up with all this information for  
9 the chemical that they manufactured?

10 MR. BRAGA: Objection.

11 THE WITNESS: I have no idea.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Aren't they your customer?

14 A. They -- certain parts of them  
15 are, yes.

16 Q. Yeah.

17 You know that Oxy Vinyls  
18 employs chemists.

19 Right?

20 A. Yes, sir.

21 Q. Isn't it a fair assumption that  
22 if they're providing you chemical -- or  
23 advice and technical information about a  
24 chemical, that they have chemists involved in  
25 that?

1 MR. BRAGA: Objection.

2 MR. LEVINE: Objection.

3 THE WITNESS: They have  
4 chemists within the organization. I  
5 don't know that they were in the  
6 conference room or the emergency  
7 operations center in Dallas.

8 QUESTIONS BY MR. GOMEZ:

9 Q. If there was no chemist  
10 involved in any of these conversations, did  
11 it occur to you to ask whether anyone in  
12 Dallas was a chemist?

13 MR. BRAGA: Objection.

14 THE WITNESS: No, because I --  
15 I was trusting what they were saying,  
16 but I was conflicted with the  
17 information I was receiving.

18 QUESTIONS BY MR. GOMEZ:

19 Q. Receiving from who?

20 A. From the folks in Dallas.

21 Q. So you were trusting what they  
22 were saying, but conflicted with the  
23 information from Dallas.

24 Aren't they the same people?

25 A. So Dallas has -- I don't know

1 who was on the telephone. There were a lot  
2 of people on the conference call.

3 When the three folks from Oxy  
4 showed up, they were wondering why we were  
5 getting conflicting information.

6 Q. And they told you they're not  
7 experts.

8 Right?

9 MR. BRAGA: Objection.

10 THE WITNESS: Exactly.

11 QUESTIONS BY MR. GOMEZ:

12 Q. That the people in Dallas were  
13 the experts.

14 Right?

15 A. They said -- no. No. They  
16 were not -- they did not indicate that they  
17 were the experts, that Dallas was the  
18 experts.

19 Q. So you had no idea between  
20 February 5th and February 6th that the people  
21 from Oxy Vinyls in Dallas providing you all  
22 this information about polymerization were  
23 experts in the product?

24 MR. BRAGA: Objection.

25 THE WITNESS: They were saying,

1           we don't believe polymerization is  
2           occurring. No.

3       QUESTIONS BY MR. GOMEZ:

4           Q.       My question was different.  
5                   My question was, between  
6       February 5th and February 6th, all these  
7       conversations that you were having with the  
8       folks in Dallas, you didn't understand any of  
9       those folks to be experts in the chemical  
10      that you were discussing?

11                   MR. BRAGA: Objection.

12                   MR. LEVINE: Objection.

13                   THE WITNESS: They have  
14      experience with the product. I don't  
15      know that they're considered experts  
16      in the product or polymerization.

17      QUESTIONS BY MR. GOMEZ:

18           Q.       They make the product.  
19                   Right?

20           A.       Okay.

21           Q.       They've been making it for  
22      decades.

23           A.       Okay. Is there a question?

24           Q.       If not them -- if not them, who  
25      else is an expert in VCM manufactured and

1 shipped by Oxy Vinyls?

2 MR. LEVINE: Objection.

3 MR. BRAGA: Objection.

4 THE WITNESS: I don't know how  
5 you want me to answer the question,  
6 sir.

7 QUESTIONS BY MR. GOMEZ:

8 Q. Do you believe, sitting here  
9 today, that the folks in Dallas from Oxy  
10 Vinyls, providing technical assistance and  
11 information over the course of 48 to  
12 72 hours, were experts in their own product?

13 MR. LEVINE: Objection.

14 THE WITNESS: I was receiving  
15 conflicting information, so it put a  
16 question in my mind.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Okay. I'll ask it one more  
19 time.

20 As you sit here today, do you  
21 believe that the people from Oxy Vinyls who  
22 were providing technical information and  
23 advice from Dallas were experts in their own  
24 product?

25 MR. BRAGA: Objection.

1 THE WITNESS: They know the  
2 product.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Okay. You're not willing to  
5 say that they're experts in the product?

6 A. I don't know who was on the  
7 phone, no, sir.

8 Q. Okay. So if you didn't consult  
9 with experts at Oxy Vinyls about the vinyl  
10 chloride monomer in the railcars, what  
11 experts did you consult with?

12 A. I spoke to a lot of people  
13 about vinyl chloride.

14 Q. Okay. Which of those people do  
15 you consider experts in vinyl chloride?

16 A. The manufacturer is -- they  
17 make the product. They understand the  
18 product. They know the product.

19 The gentlemen that sat beside  
20 me at the NTSB hearing, he was a degreed  
21 chemist. Is he an expert in polymerization?  
22 I don't know. He's a chemist.

23 He doesn't -- did not -- he  
24 specifically said he didn't know why the  
25 statements were in the SDS, so that's

1 conflicting information.

2 We read all these different  
3 documents, and you get conflicting  
4 information. So you have to reach out to a  
5 lot of people and form decisions.

6 Q. And those people that you  
7 reached out to, which of them do you consider  
8 to be experts in vinyl chloride monomer?

9 MR. LEVINE: Objection.

10 THE WITNESS: I don't. None of  
11 them. None of them were experts in  
12 vinyl chloride monomer.

13 QUESTIONS BY MR. GOMEZ:

14 Q. So as far as you're concerned,  
15 no one consulted with any experts about vinyl  
16 chloride monomer before conducting the vent  
17 and burn on February 6th?

18 A. There were a lot of discussions  
19 about vinyl chloride, the potential for  
20 polymerization of material.

21 Q. My question is specific to  
22 experts, so I'll ask it again.

23 As far as you're concerned,  
24 between February 5th and February 6th, there  
25 was never a consultation with any expert in

1 vinyl chloride monomer.

2 Yes or no?

3 MR. LEVINE: Objection.

4 THE WITNESS: OxyChem makes  
5 VCM. They understand VCM. They sent  
6 folks to the scene that understand VCM  
7 in emergency conditions.

8 So hanging a tag of expert on  
9 any one person, I'm not going to do it  
10 because we were getting so much  
11 conflicting information.

12 It is -- could it potentially  
13 polymerize; yes or no?

14 Well, we're not experts in  
15 polymerization. We really don't know.  
16 I guess we're going to have to go to  
17 Dallas to explain why there's a P in  
18 the DOT guidebook behind vinyl  
19 chloride. The potential was there.

20 QUESTIONS BY MR. GOMEZ:

21 Q. Did it occur to you at any  
22 point in time while you were on-scene before  
23 the vent and burn occurred on February 6th  
24 that it would make sense to talk to the most  
25 knowledgeable experts in vinyl chloride



1 monomer before conducting that operation?

2 MR. LEVINE: Objection.

3 THE WITNESS: We spoke to a lot  
4 of people. None of them, I'm going to  
5 say, are experts in vinyl chloride  
6 monomer.

7 We talked to professionals in  
8 tank car manage -- or tank car  
9 derailment assessment after the  
10 recommendation to vent and burn the  
11 cars were made.

12 QUESTIONS BY MR. GOMEZ:

13 Q. So no one decided that they  
14 should reach out to the most knowledgeable  
15 person available on VCM polymerization before  
16 conducting a vent and burn?

17 MR. LEVINE: Objection.

18 MR. BRAGA: Objection.

19 THE WITNESS: There's a lot of  
20 people in the technical group that had  
21 the ability. You're asking me the  
22 question. I was one of several  
23 people.

24 QUESTIONS BY MR. GOMEZ:

25 Q. But none of them were experts.

1 Right? We've established that?

2 MR. LEVINE: Objection.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Is that yes?

5 A. Correct.

6 Q. Okay. None of them were  
7 chemists.

8 Right?

9 A. Correct.

10 Q. Wouldn't it make sense to at  
11 least get a chemist involved before  
12 conducting the vent and burn if you believe  
13 that there was polymerization occurring?

14 A. I had folks that I spoke to.  
15 Drew had folks that he spoke to. The Oxy  
16 Vinyls folks had folks that they spoke to.  
17 Everybody in the group was able to speak to  
18 different people to gather additional  
19 information.

20 Q. But you can't say whether any  
21 of those people across all of those different  
22 conversations were experts in vinyl chloride  
23 monomer polymerization?

24 A. I cannot.

25 Q. Between the activation of that

1 PRD on the third car for 70 minutes and the  
2 vent and burn on February 6, 2023, it was  
3 roughly 48 hours.

4 Right?

5 A. Give me that time one more  
6 time?

7 Q. Sure.

8 The PRD activated for  
9 70 minutes. I'm going to refer to that as  
10 extended PRD activation.

11 Okay?

12 A. Okay.

13 Q. Just for shorthand.

14 Between the time that the PRD  
15 activated for an extended period of time on  
16 that vinyl chloride monomer car and the time  
17 of the vent and burn on February 6, 2023, was  
18 roughly 48 hours.

19 Wasn't it?

20 A. Yes, sir.

21 Q. And the reason ultimately to  
22 decide to do the vent and burn was because of  
23 the possibility that polymerization was  
24 occurring.

25 Right?

1 A. Correct.

2 Q. And that that polymerization  
3 could lead to an increase in pressure in the  
4 cars.

5 Right?

6 A. Correct.

7 Q. And there was an imminent  
8 danger that those cars would then break apart  
9 and explode, sending shrapnel throughout East  
10 Palestine.

11 Right?

12 A. Correct.

13 Q. So if that decision was made,  
14 or if that conclusion was made, 48 hours  
15 before the vent and burn occurred, why did it  
16 take so long to conduct the operation?

17 MR. LEVINE: Objection.

18 THE WITNESS: There was a lot  
19 of setup. There was a lot of  
20 communications that needed to take  
21 place. There was a lot of planning,  
22 and we had to bring a lot of stuff to  
23 the site.

24 QUESTIONS BY MR. GOMEZ:

25 Q. And in addition to all those

1 preparations and planning and staging that  
2 you needed to do, you wanted to get as much  
3 information as possible about whether  
4 polymerization was actually occurring in  
5 those cars before deciding to blow them up.

6 Right?

7 MR. LEVINE: Objection.

8 THE WITNESS: We did not blow  
9 the cars up.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Okay. Let me rephrase it.

12 Putting aside all the staging  
13 and getting equipment to the site and the  
14 like, you also wanted to use that 48-hour  
15 period to generate as much information about  
16 whether or not polymerization was actually  
17 occurring in the vinyl chloride cars before  
18 you conducted the vent and burn.

19 Right?

20 A. There was a concern that  
21 polymerization was occurring, yes. So, yes.

22 Q. Okay. Let me -- let me just  
23 make it a simpler question.

24 During the 48 hours that you  
25 were staging the vent and burn, did you also

1 try and get more information to con -- to  
2 confirm whether or not polymerization was  
3 actually occurring?

4 MR. LEVINE: Objection.

5 MR. BRAGA: Objection.

6 THE WITNESS: There was --  
7 there were a lot of temperatures taken  
8 on the cars. The unfortunate part is  
9 with polymerization, you -- it forms  
10 on the inside of the car. And we were  
11 using contact thermometers and  
12 infrared thermometers to take the  
13 temperature readings. We were not  
14 able to get up on top of the cars and  
15 take a core temperature of the  
16 product.

17 (Day Exhibit 8 marked for  
18 identification.)

19 QUESTIONS BY MR. GOMEZ:

20 Q. Can we pull up Document 107  
21 which we will mark as Exhibit 8, please?

22 Mr. Day, this document that  
23 we've marked as Exhibit 8 is a text message  
24 exchange between you and Drew McCarty.

25 Is that correct?

1           A.       This appears to be it, yes,  
2    sir.

3           Q.       Okay. And if we look at the  
4    dates of the conversations, it looks like  
5    this particular thread begins March 26, 2023.

6                    Right?

7           A.       Yes, sir.

8           Q.       And the time is actually in  
9    GMT, so it's five hours ahead of the actual  
10   time. So 2:20 a.m. would have been roughly  
11   9:20 p.m. the night before.

12                   Is that fair?

13          A.       Sure.

14          Q.       I just kind of want to orient  
15   us because the time doesn't quite line up  
16   with the time zone that we're currently in.

17                   And if we look through this  
18   thread, it looks like there's two  
19   conversations going on.

20                   The second begins with Drew  
21   McCarty texting on March 26, 2023, at  
22   10:08 p.m., or what says 10:08 p.m.

23                   "Do you recall roughly when NS  
24   called you guys on February 4thh and when you  
25   got to EP?"

1 Do you see that?

2 A. Yes, sir.

3 Q. And then you respond, laying  
4 out the timeline of your involvement.

5 Right?

6 A. Yes, sir.

7 Q. Drew thanks you for that  
8 information.

9 And you respond, "What's up  
10 now?"

11 Right?

12 A. Uh-huh. Yes, sir.

13 Q. Mr. McCarty then says, "I have  
14 to do a presentation tomorrow," and continues  
15 by saying, quote, "Basically I want to get  
16 ahead of a question that could pop up. If  
17 you were already at V&B Saturday afternoon  
18 after the sudden and violent PRD 70-minute  
19 release, why wait till Sunday afternoon to  
20 present to fire chief? My response would be  
21 such a significant decision, NS wanted to get  
22 more folks like you and Terry here for your  
23 opinions as well before deciding that. I  
24 just wanted to make sure I recalled the  
25 timeline correctly, and I believe I have it.



1 All good."

2 Did I read that correctly?

3 A. Yes, sir.

4 Q. The reference to V&B in this  
5 text message from Drew McCarty, did you take  
6 that to mean vent and burn?

7 A. Yes, sir.

8 Q. And according to his text  
9 message, he's saying that his explanation of  
10 why there was a delay between when the  
11 decision was made to conduct a vent and burn  
12 to the presentation to incident command was  
13 to get more eyes on the cars and more  
14 opinions about whether polymerization was  
15 occurring.

16 Right?

17 MR. LEVINE: Objection.

18 MR. BRAGA: Objection.

19 THE WITNESS: That's basically  
20 what it looks like it's saying, yes,  
21 sir.

22 QUESTIONS BY MR. GOMEZ:

23 Q. And he mentions specific people  
24 whose opinions he wanted.

25 Right?

1 A. Yes, sir.

2 Q. There's a reference to you.

3 Right?

4 A. Yes, sir.

5 Q. There's a reference to Terry.

6 Right?

7 A. Yes, sir.

8 Q. That's Terry Rockwell.

9 Right?

10 A. Yes, sir.

11 Q. And they wanted your opinions  
12 about whether polymerization was occurring  
13 before actually making the recommendation and  
14 carrying out the operation.

15 Right?

16 MR. LEVINE: Objection.

17 THE WITNESS: That appears what  
18 it says.

19 QUESTIONS BY MR. GOMEZ:

20 Q. Nothing in this text message  
21 suggests that Mr. McCarty wanted information  
22 from the product manufacturer before making  
23 that presentation to incident command.

24 Right?

25 MR. BRAGA: Objection.

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1 THE WITNESS: I'm not sure what  
2 the -- the presentation he's talking  
3 about. I don't know if this is to  
4 incident command. I don't know  
5 anything.

6 And the 26th, it's after the  
7 incident is over.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Understood.  
10 I'm focusing just on his  
11 explanation that he wants to get ahead of a  
12 question about being at vent and burn on  
13 Saturday afternoon and waiting until Sunday  
14 to present to the fire chief.

15 You agree with me that his  
16 explanation, at least according to this text  
17 message, was he wanted more eyes on the  
18 railcars, yours included.

19 Right?

20 MR. LEVINE: Objection.

21 THE WITNESS: The Norfolk  
22 Southern.

23 QUESTIONS BY MR. GOMEZ:

24 Q. That Norfolk Southern wanted  
25 more eyes --

1 A. Correct.

2 MR. LEVINE: Objection.

3 QUESTIONS BY MR. GOMEZ:

4 Q. -- on the cars.

5 Right?

6 A. That's what it says. Norfolk  
7 Southern wants more eyes -- more folks like  
8 you and Terry here for your opinion as well  
9 before deciding that.

10 Q. And at least according to this  
11 text message, Mr. McCarty doesn't identify  
12 that Norfolk Southern wanted the product  
13 manufacturer's eyes on the cars before  
14 deciding on the vent and burn.

15 Right?

16 A. That's -- it doesn't say  
17 anything about the product manufacturer.

18 Q. They're nowhere to be found.

19 Right?

20 MR. LEVINE: Objection.

21 THE WITNESS: I have no idea  
22 where they're at.

23 QUESTIONS BY MR. GOMEZ:

24 Q. And --

25 A. This is on March 26th, well

1 after the incident.

2 Q. Yeah.

3 Mr. McCarty's, after the fact,  
4 trying to come up with an explanation for why  
5 he waited to make a presentation on vent and  
6 burn after the PRD activated for 70 straight  
7 minutes on Saturday, February 4th.

8 Right?

9 MR. BRAGA: Objection.

10 MR. LEVINE: Objection.

11 THE WITNESS: I'm not sure  
12 what you're asking me.

13 QUESTIONS BY MR. GOMEZ:

14 Q. Well, I'm asking you if what  
15 you took this text message to mean, the one  
16 that he sent you on March 26, 2023, was  
17 Mr. McCarty trying to come up with an  
18 explanation for if polymerization was an  
19 imminent danger, why it took so long for him  
20 to make that presentation to incident  
21 command?

22 MR. BRAGA: Objection.

23 MR. LEVINE: Objection.

24 THE WITNESS: I don't know what  
25 presentation he's making this --

1 making. This is on the 26th, so this  
2 is after the incident.

3 QUESTIONS BY MR. GOMEZ:

4 Q. He says, "Present to fire chief  
5 staff."

6 He's referring to Sunday  
7 afternoon. He's talking about making the  
8 presentation of the vent and burn option.

9 Right?

10 MR. LEVINE: Objection.

11 THE WITNESS: He has a  
12 presentation to do -- to make  
13 tomorrow, and this is on 3/26.

14 I'm confused what your question  
15 is.

16 QUESTIONS BY MR. GOMEZ:

17 Q. Yeah. I'm not asking about the  
18 presentation he made in March of 2023.

19 A. Okay.

20 Q. What I'm asking is about his  
21 explanation to you in the subsequent text  
22 that he wants to come up with an explanation  
23 for why so much time elapsed between when the  
24 PRD went off for 70 minutes and he first  
25 decided to bring up vent and burn to the

1 incident command structure.

2 MR. BRAGA: Objection.

3 MR. LEVINE: Objection.

4 QUESTIONS BY MR. GOMEZ:

5 Q. Did you take that statement --  
6 did you take that text message to be  
7 providing an explanation for why he waited so  
8 long?

9 MR. LEVINE: Objection.

10 THE WITNESS: Generally you  
11 could come to that, yes.

12 QUESTIONS BY MR. GOMEZ:

13 Q. And the reason was, NS wanted  
14 other folks' input on the condition of the  
15 railcars.

16 Right?

17 A. Yes, sir.

18 Q. You were one of those people?

19 A. I was.

20 Q. Terry Rockwell was one of those  
21 people?

22 A. He was.

23 Q. According to this text message,  
24 the product manufacturer was not one of those  
25 people.

1 MR. LEVINE: Objection.

2 THE WITNESS: That's correct.

3 QUESTIONS BY MR. GOMEZ:

4 Q. According to this text message,  
5 outside experts were not some of those  
6 people.

7 MR. LEVINE: Objection.

8 THE WITNESS: It identifies  
9 myself and Terry.

10 QUESTIONS BY MR. GOMEZ:

11 Q. And you're --

12 A. Wants "more folks like."

13 And it says, "NS wanted to get  
14 more folks like you and Terry," not, NS  
15 wanted you and Terry. More folks.

16 Q. So you took that to mean that  
17 there were other people that they wanted as  
18 well --

19 A. Correct.

20 Q. -- right?

21 He just neglected to identify  
22 them here.

23 A. He didn't identify them, yes,  
24 sir.

25 Q. Right?



1 And you agree with this  
2 explanation.

3 Right?

4 MR. LEVINE: Objection.

5 THE WITNESS: I agree that the  
6 NS wanted to get more folks like  
7 myself and Terry to get their opinions  
8 on the car.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Okay. That's why you said that  
11 you're on the same sheet of music on the  
12 next -- in the next text message.

13 Right?

14 A. That's correct.

15 Q. But as you sit here today, you  
16 can't say whether those more folks included  
17 Oxy Vinyls as the product manufacturer.

18 Right?

19 MR. LEVINE: Objection.

20 THE WITNESS: You're asking me  
21 about the definition of "NS wanted to  
22 get more folks like you and Terry for  
23 your opinions as well as -- as well  
24 before deciding that."

25 And I understand. I'm on the

1 same sheet of music. We want to get  
2 more people involved.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Okay. And I'm asking you, do  
5 those more people, those more folks who you  
6 agreed with by saying "same sheet of music,"  
7 include the product manufacturer?

8 MR. LEVINE: Objection.

9 MR. BRAGA: Objection.

10 THE WITNESS: That would be --  
11 theoretically, that would be the  
12 product manufacturer as well --

13 QUESTIONS BY MR. GOMEZ:

14 Q. No, not theoretically. You  
15 were in the East Palestine.

16 A. With OxyChem.

17 Q. Did you want insight from  
18 OxyChem before recommending the vent and  
19 burn?

20 A. Yes.

21 Q. And they told you no  
22 polymerization was happening.

23 Right?

24 MR. LEVINE: Objection.

25 THE WITNESS: But were not

1 polymerization experts.

2 QUESTIONS BY MR. GOMEZ:

3 Q. That's the guys in the field.

4 Right?

5 A. Correct.

6 Q. Who told you, we're not  
7 experts, but we can get you the answers from  
8 the experts.

9 A. So we're getting conflicting  
10 information from the people -- from the  
11 manufacturer. Polymerization can occur. It  
12 could occur, but we're not experts in it.  
13 It's an emergency response.  
14 We've got to make decisions pretty rapidly to  
15 get the things moving because the clock is  
16 ticking. We've got to get things done to  
17 protect life safety and the City of East  
18 Palestine.

19 Q. But you were told in no  
20 uncertain terms from the experts in Dallas,  
21 at least 48 hours before the vent and burn  
22 occurred, that no polymerization was  
23 occurring.

24 MR. LEVINE: Objection.

25 MR. BRAGA: Objection.

1 THE WITNESS: And the reference  
2 manuals that we were using indicated  
3 that polymerization was a potential.

4 QUESTIONS BY MR. GOMEZ:

5 Q. So between your reading of the  
6 reference manuals and the conclusions of the  
7 experts that wrote it, you choose your  
8 reading of the materials?

9 MR. LEVINE: Objection.

10 MR. BRAGA: Objection.

11 THE WITNESS: An SDS is  
12 provided to emergency responders in  
13 case of an incident involving that  
14 product. They say seven different  
15 times, or six different times, that  
16 polymerization is a potential.

17 Now we're getting conflicting  
18 information. Well, it could occur,  
19 won't occur, won't occur. What is it?

20 The SDS says it could occur.

21 QUESTIONS BY MR. GOMEZ:

22 Q. If that information in the SDS  
23 is conflicting, and you're speaking to the  
24 people that wrote it, and they are clarifying  
25 it for you, it's no longer conflicting?

1 A. Even --

2 MR. LEVINE: Objection.

3 MR. BRAGA: Objection.

4 THE WITNESS: Even the chemist  
5 sitting next to me at the NTSB hearing  
6 said he's not sure why it's in there.  
7 Okay?

8 But it's a document. It's  
9 seven different times. It's hard to  
10 say -- if it was once, I can  
11 understand it. Twice, eh. Seven --  
12 six or seven times, polymerization is  
13 potential? You got to believe  
14 something -- somebody, and we believed  
15 the SDS.

16 QUESTIONS BY MR. GOMEZ:

17 Q. Over the people that wrote it?

18 MR. LEVINE: Objection.

19 THE WITNESS: I don't know who  
20 wrote the SDS.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Oxy wrote it.

23 Right?

24 A. Oxy wrote it.

25 Q. Yeah.

1 MR. LEVINE: Objection.

2 QUESTIONS BY MR. GOMEZ:

3 Q. And you were talking to Oxy?

4 A. Oxy is great group of people.

5 A great group of people. They have a lot of  
6 people that are really, really good at what  
7 they do.

8 All I can say tell you is we  
9 were getting conflicting information. We  
10 needed to come up with a solution and a  
11 recommendation.

12 What they didn't provide was  
13 other options.

14 Q. Other options for what?

15 A. What to do with that product.

16 Could we tran -- there's a list of options  
17 they have to emergency responders. I can go  
18 through each one of them. None of those  
19 could be done.

20 They were getting ready to  
21 hot-tap the car when that PRD went off. But  
22 there's so many hazards, there's so much risk  
23 involved in that.

24 The outcome is exactly the  
25 same. It's just over a much, much longer

1 period of time.

2 Q. And all of those other options  
3 that you just referenced, they were ruled out  
4 because of polymerization.

5 Right?

6 MR. BRAGA: Objection.

7 THE WITNESS: The other  
8 options. We have to go individually.  
9 You want to go to individually? I can  
10 start right now. I'll tell you  
11 individually each one and the problems  
12 with that option.

13 QUESTIONS BY MR. GOMEZ:

14 Q. Actually, let's just go to  
15 hot-tap.

16 Hot-tap was ruled out because  
17 of polymerization.

18 Right?

19 A. Polymerization potential, yes,  
20 sir.

21 Q. Okay. If polymerization wasn't  
22 occurring, you would have hot-tapped the  
23 cars?

24 A. We were -- they were preparing  
25 to hot-tap the cars when that PRD went off.

1 Q. Okay. And you thought  
2 polymerization was occurring because of  
3 statements in the SDS.

4 Right?

5 A. And the way the cars were --  
6 the cars were acting, yes.

7 Q. And when the experts who wrote  
8 the SDS told you polymerization is not  
9 occurring, you believed your interpretation  
10 of the SDS over what they told you?

11 MR. LEVINE: Objection.

12 MR. BRAGA: Objection.

13 THE WITNESS: And other  
14 industry folks.

15 QUESTIONS BY MR. GOMEZ:

16 Q. None of whom are chemists.  
17 Right?

18 A. Correct.

19 Q. None of whom are experts in VCM  
20 polymerization.

21 Right?

22 A. Correct.

23 MR. LEVINE: Lunch?

24 MR. GOMEZ: Yeah. It's a good  
25 time.



1 VIDEOPHOTOGRAPHER: Okay. Stand by.

2 The time is 12:24 p.m., and  
3 we're going off the record.

4 (Off the record at 12:24 p.m.)

5 VIDEOPHOTOGRAPHER: The time is  
6 1:02 p.m., and we're back on the  
7 record.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Mr. Day, are you familiar with  
10 the concept of super-cooling derailed tank  
11 cars?

12 A. I've never heard that term, no.

13 Q. Did you discuss at any point in  
14 time with Bob Gold in connection with the  
15 East Palestine derailment the need to keep  
16 VCM cars cool?

17 A. Are you talking about  
18 auto-refrigeration?

19 Q. No, I'm talking about actual  
20 activities that responders can take to  
21 actively cool VCM tank cars that are  
22 derailed.

23 A. That are on fire?

24 Q. Yes.

25 A. Yes.

1 Q. Okay.

2 A. "Super-cooling," I've never  
3 heard that term, but cooling of cars, yes.

4 Q. And the idea there is to keep  
5 the temperature down so that you don't have a  
6 BLEVE.

7 Right?

8 A. Correct.

9 Q. And if there's a concern about  
10 heat causing polymerization of a  
11 polymerizable chemical like VCM, the cooling  
12 helps with that as well.

13 Right?

14 A. If you're getting it to the  
15 product, yes, sir.

16 Q. From the time that you arrived  
17 on-scene the morning of February 5th to the  
18 time of the vent and burn, there were no  
19 operations to cool the derailed VCM cars.

20 Correct?

21 A. There was no operation for  
22 cooling the VCM cars when we were there, yes.

23 However, very important part to  
24 know is, these are jacketed tank cars. They  
25 have an inner shell, is where the product is.

1     There's four inches of insulation. There's a  
2     half-inch thermal protection, and there's an  
3     eight-inch outer jacket.

4                     In order to get cooling water  
5     to the shell of the car, you have to take all  
6     that jacket off.

7             Q.       So is it your testimony that  
8     but for the jackets being on the cars, there  
9     would have been efforts to cool the VCM  
10    railcars?

11                    MR. BRAGA: Objection.

12                    THE WITNESS: I -- at the time  
13                    I was there, had I been there and we  
14                    had jacket removed, the jackets were  
15                    not there, we probably would have put  
16                    cooling water on the cars.

17    QUESTIONS BY MR. GOMEZ:

18             Q.       During your time on the scene  
19     between February 5th and February 6th, did  
20     you ever become aware of discussions about  
21     using foam to cool the VCM cars?

22             A.       Foam does nothing for cooling.  
23     And again, you still have to get it on the  
24     shell of the car, not the jacket.

25             Q.       Okay. So putting that aside,

1 my question is, were there any conversations  
2 about using foam to cool the cars that you  
3 are aware of between February 5th and  
4 February 6th?

5 A. There are no -- no use of foam  
6 for cooling because you're not getting the  
7 foam to the shell of the car.

8 Q. So if there were conversations  
9 about using foam that were ruled out because  
10 foam is fluorinated, you weren't aware of  
11 those.

12 Right?

13 A. Correct.

14 Q. Are you familiar with a product  
15 called F-500?

16 A. I am.

17 Q. F-500 is a thermal  
18 encapsulator.

19 Right?

20 MR. BRAGA: Object to the form  
21 of the question.

22 THE WITNESS: F-500 is a  
23 material that is available to the fire  
24 service.  
25

1 QUESTIONS BY MR. GOMEZ:

2 Q. It's a super-cooling material.

3 Isn't it?

4 A. F-500 is a material that is  
5 available to the fire service. That's as far  
6 as I know about F-500.

7 Q. Okay. You've been a  
8 firefighter since 19 --

9 A. In the '70s.

10 Q. -- '81?

11 A. In the '70s.

12 Q. So over 40 years.

13 Fair?

14 A. Fair.

15 Q. And all you know about F-500 is  
16 that it's a material that's available to the  
17 firefighting industry?

18 A. You are absolutely correct.

19 Q. Were there any conversations  
20 that you can recall from February 5th to  
21 February 6th in East Palestine about whether  
22 F-500 was an option to cool the VCM cars?

23 A. No, sir.

24 Q. Is it fair to say that you  
25 don't recall any conversations between

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1 February 5th and February 6th about the  
2 availability of F-500 product in the area to  
3 support the East Palestine derailment  
4 response?

5 MR. LEVINE: Objection.

6 THE WITNESS: F-500 is a  
7 material that's available to fire  
8 service across the nation.

9 QUESTIONS BY MR. GOMEZ:

10 Q. It's a product that's been  
11 around for over a decade.

12 Right?

13 A. It's available to the fire  
14 service.

15 Q. Fair to say you don't know  
16 anything about the application of F-500 or  
17 potential application of F-500 to the VCM  
18 cars in the East Palestine derailment?

19 MR. BRAGA: Objection.

20 MR. LEVINE: Objection.

21 THE WITNESS: In order to cool  
22 the cars, whether you're using F-500,  
23 AR-AFFF, the new Green foam or water,  
24 the jackets must be removed. You must  
25 apply cooling water to the shell of

1 the car, not the jacket.

2 QUESTIONS BY MR. GOMEZ:

3 Q. And you can say that even  
4 though you don't know anything about F-500  
5 except that it's available to the  
6 firefighting service?

7 MR. BRAGA: Objection.

8 THE WITNESS: I'll say it one  
9 more time. F-500 is a material  
10 available to the fire service, just  
11 like AR-AFFF, just like the new Green  
12 foam, just like water.

13 The material, in order to --  
14 for it to cool, must be applied to the  
15 shell of the car, not to the jacket.  
16 Otherwise, you're wasting it.

17 QUESTIONS BY MR. GOMEZ:

18 Q. And you know that for a fact in  
19 the case of F-500?

20 A. I know that for a fact for  
21 water, foam, Green foam -- AR-AFFF, Green  
22 foam or F-500.

23 Q. Okay. Can you tell me how  
24 F-500 works?

25 A. It's a material that's

1 available. I am not an expert in F-500. I  
2 have an opinion of F-500 that I'd rather not  
3 divulge.

4 Q. I'm just trying to understand  
5 how you know nothing about F-500 except that  
6 it's available, but at the same time can say  
7 that it wouldn't work to cool the VCM cars.

8 A. The construction of a tank car,  
9 a 105J300W tank car, there is a shell where  
10 the product is. There is four inches of  
11 insulation. There is a half-inch thermal  
12 protection. There is an eighth-inch outer  
13 jacket. On the heads, there's an additional  
14 half-inch of head shield. May be full, may  
15 be half.

16 In order to cool the car, you  
17 must apply a cooling solution. Whether it's  
18 F-500, AR-AFFF, Green foam or water, it's got  
19 to be on the shell, not on the jacket.

20 Q. Have you received any training  
21 specific to the application of F-500 in  
22 railcars?

23 A. No, sir.

24 Q. I want to fast-forward to the  
25 vent and burn preparations and the actual



1 procedure itself.

2 As far as implementing the vent  
3 and burn, there was outsourcing of work to  
4 Explosive Services International.

5 Is that fair?

6 A. Correct.

7 Q. And the head of Explosive  
8 Services International in February of 2023  
9 was Jason Poe?

10 A. Yes, sir.

11 Q. Okay. I believe his father,  
12 Billy Poe, founded the company.

13 Right?

14 A. That's correct.

15 Q. And Billy Poe was the  
16 contractor who placed the explosives for the  
17 vent and burn in Livingston, Louisiana.

18 Right?

19 A. I don't think he was the  
20 contractor. I think he was still with the  
21 state police.

22 Q. Okay. "Contractor" is a bad  
23 word.

24 He was the person?

25 A. That's offensive.

1 Q. I don't mean it like that, sir.

2 Rather, it was not the proper  
3 word to use in that question.

4 Is it fair to say that Billy  
5 Poe -- or do you recall Billy Poe being the  
6 person who placed and implemented the  
7 explosives for the Livingston vent and burn?

8 A. Billy Poe was the explosives  
9 person for Livingston, yes, sir.

10 Q. Is it understood within your  
11 industry that Billy Poe developed or invented  
12 the vent and burn procedure?

13 MR. BRAGA: Objection.

14 THE WITNESS: Refined it, I'll  
15 say, yes.

16 QUESTIONS BY MR. GOMEZ:

17 Q. Okay. So it had been around  
18 before Billy Poe, but Billy Poe fine-tuned it  
19 to what we understand it to be today.

20 Is that fair?

21 A. That's a good surmise, yes,  
22 sir.

23 Q. And his son, Jason Poe, the now  
24 current head of ESI, has a background in law  
25 enforcement, if I'm not mistaken.

1 Right?

2 A. That's correct.

3 Q. Specifically with explosive  
4 ordnance.

5 Right?

6 A. He's on the state police. He  
7 was on the SWAT team, several other groups.

8 Q. Okay. In your opinion, is ESI  
9 the best contractor for using explosives in a  
10 vent and burn procedure?

11 MR. LEVINE: Objection.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. GOMEZ:

14 Q. And would that include Jason  
15 Poe specifically?

16 A. Yes, sir.

17 Q. And as the best folks available  
18 to implement and carry out a vent and burn,  
19 they know the best conditions under which to  
20 do it.

21 Right?

22 MR. BRAGA: Objection.

23 THE WITNESS: I'm not -- I'm  
24 not following your question.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Sure.

3 If they are the best in  
4 carrying out a vent and burn, would you agree  
5 with me that they also know when the right  
6 conditions are to actually implement the  
7 procedure?

8 A. Yes, sir.

9 MR. LEVINE: Objection.

10 QUESTIONS BY MR. GOMEZ:

11 Q. When Jason Poe and his company,  
12 ESI, are brought in to, let's say, a  
13 derailment, for example, they're not  
14 performing their own assessment of the  
15 railcars.

16 Right?

17 MR. BRAGA: Objection.

18 THE WITNESS: That's correct.

19 They are not performing the  
20 assessment.

21 QUESTIONS BY MR. GOMEZ:

22 Q. They're taking in information  
23 about the railcars that's provided to them by  
24 the railroad.

25 Right?

1 A. By multiple sources.

2 Q. The railroad included?

3 A. Included.

4 Q. Emergency -- other emergency  
5 contractors.

6 Right?

7 A. Yes, sir.

8 Q. Okay. And that information can  
9 include the condition of the railcars.

10 Right?

11 A. Yes, sir.

12 Q. The volume of the lading  
13 remaining in the railcars.

14 Right?

15 A. The volume remaining, we don't  
16 have access to thermometer -- or not  
17 thermometers, but gauging rods, to determine  
18 how much liquid is left in those cars because  
19 of the fires.

20 Q. How about the effects, the air  
21 effects, of any vent and burn procedure? Are  
22 they relying on the railroad and contractors  
23 to provide them information about that?

24 MR. BRAGA: Objection.

25 MR. LEVINE: Objection.

1 THE WITNESS: To understand how  
2 an incident like this occurs,  
3 everybody is brought in for mostly  
4 specific functions. There are air  
5 folks, and there are ground folks, and  
6 there are contractors that transfer  
7 products. So the environmental  
8 conditions, that is handled by other  
9 folks.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Okay. So if, let's say, air  
12 conditions are important to someone like  
13 Jason Poe, he's relying on the air folks to  
14 give him that information.

15 Right?

16 A. Correct.

17 Q. He's not capable of doing it  
18 himself.

19 Right?

20 MR. BRAGA: Objection.

21 THE WITNESS: That's correct.

22 QUESTIONS BY MR. GOMEZ:

23 Q. So the outcome of what Jason  
24 Poe does in a vent and burn is only as good  
25 as the information he's getting.

1 Right?

2 MR. LEVINE: Objection.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. GOMEZ:

5 Q. Part of getting Jason Poe to  
6 the site and eventually conducting the vent  
7 and burn was having Norfolk Southern complete  
8 some paperwork with him.

9 Correct?

10 A. That's correct.

11 Q. Specifically an indemnity  
12 agreement.

13 Right?

14 A. There was some documentation  
15 that needed to be signed.

16 Q. And that information, or  
17 documentation, flowed to Norfolk Southern  
18 from Jason Poe through you.

19 Right?

20 A. That's correct.

21 Q. And do you recall that one of  
22 those -- two of those documents were  
23 indemnity or hold harmless agreements?

24 A. They were documents. Jason  
25 told me, I need these signed, and the conduit

1 was very easy while he was setting up --  
2 working with his explosives guys for me to do  
3 it.

4 Q. And he told you he needed it  
5 signed so that he was protected from  
6 intentionally releasing product into the  
7 environment.

8 Right?

9 MR. LEVINE: Objection.

10 THE WITNESS: I need this  
11 paperwork signed.

12 (Day Exhibit 9 marked for  
13 identification.)

14 QUESTIONS BY MR. GOMEZ:

15 Q. Can we pull up Document  
16 Number 92, which is Exhibit Number 9?

17 Mr. Day, this Exhibit 9 that  
18 we've marked to your deposition. It's an  
19 e-mail exchange that starts on the second  
20 page from February 5, 2023.

21 Is that right?

22 A. It is February 5, 2023.

23 Q. And you'll agree with me these  
24 are e-mails.

25 Right?



1           A.       These are copies of e-mails,  
2   yes, sir.

3           Q.       Okay. That e-mail that's on  
4   the -- that starts on the second page, the  
5   bottom of the second page of the exhibit,  
6   that's an e-mail from Jason Poe to you.

7                    Correct?

8           A.       That is from him to me, yes,  
9   sir.

10          Q.       And the e-mail says, "Chip,  
11   here's my hold harmless. I will need NF to  
12   sign before I make any shots."

13                   Did I read that correctly?

14          A.       That, you did.

15          Q.       NF, do you understand that to  
16   actually be a typo? It should be NS?

17          A.       Sure. I can agree to that.

18          Q.       The e-mail then goes on to say,  
19   "Please give this to whomever will make that  
20   decision."

21                   Right?

22          A.       That's what it says.

23          Q.       And the e-mail concludes, "This  
24   covers cover me for intentionally,  
25   parentheses, as directed by them, from

1 putting the product in the air and on the  
2 ground when I make the shots."

3 Did I read that correctly?

4 A. You did.

5 Q. Okay. So this is -- this  
6 e-mail is Mr. Poe sending you a hold harmless  
7 agreement for NS to sign so that he is  
8 protected in the event that he implements the  
9 explosives and product is released into the  
10 environment.

11 Right?

12 A. That is correct.

13 Q. And there is a reference to --  
14 where it says, "Please give this to whomever  
15 will make that decision."

16 My question is, Mr. Poe's  
17 reference to a decision there, did you  
18 understand that to mean the vent and burn  
19 decision?

20 A. Since it's coming from Jason,  
21 I'm going to say it probably has to do with  
22 that.

23 Q. So because Norfolk Southern was  
24 the ones making the decision about the vent  
25 and burn, you gave this agreement to folks at

1 Norfolk Southern.

2 Right?

3 MR. LEVINE: Objection.

4 MR. BRAGA: Objection.

5 THE WITNESS: So the document,  
6 the e-mail, is a hold harmless  
7 agreement he asked me to send to the  
8 Norfolk Southern.

9 The signature must -- since  
10 he's working for the Norfolk Southern,  
11 the signature for the decision to sign  
12 the -- sign the document would be  
13 coming from the Norfolk Southern.

14 QUESTIONS BY MR. GOMEZ:

15 Q. Okay. And you in fact did send  
16 it to Norfolk Southern.

17 Right?

18 A. According to this e-mail,  
19 February 5th at 5:09 p.m. is when I sent it  
20 to Mr. Schoendorfer and Mr. Wood.

21 Q. And when Mr. Poe says in his  
22 original e-mail, "This covers me for  
23 intentionally, as directed by them, from  
24 putting the product in the air and on the  
25 ground when I make the shots," by forwarding

1 this e-mail to Norfolk Southern, you  
2 understood that it was Norfolk Southern who  
3 he was referring to there.

4 Right?

5 MR. BRAGA: Objection.

6 MR. LEVINE: Objection.

7 THE WITNESS: I sent this  
8 document to the Norfolk Southern.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Because they're the ones that  
11 were hiring him to do the vent and burn.

12 Right?

13 A. That's correct.

14 Q. Before the East -- we can put  
15 that aside, sir.

16 A. Oh.

17 Q. Before the East Palestine  
18 derailment, when was the last opportunity  
19 that you had to work directly with Jason Poe  
20 or ESI?

21 A. On an offshore project a few  
22 months before that.

23 Q. In your past experience with  
24 either Jason Poe or ESI, have any of those  
25 involved vinyl chloride monomer?

1           A.       No.

2           Q.       Have you -- before being  
3 involved in the East Palestine derailment,  
4 did you ever have the occasion to discuss  
5 Mr. Poe or ESI's background with venting and  
6 burning materials undergoing polymerization?

7                   MR. LEVINE: Objection.

8                   THE WITNESS: I don't  
9 understand your question.

10       QUESTIONS BY MR. GOMEZ:

11           Q.       Sure.

12                   Before the East Palestine  
13 derailment, had you ever discussed with  
14 Mr. Poe or anyone else at ESI the company's  
15 experience with carrying out a vent and burn  
16 on materials that were considered to be  
17 polymerizing?

18           A.       We've talked about materials  
19 that have the potential for polymerization,  
20 yes.

21           Q.       Did you ever, before the East  
22 Palestine derailment, discuss with Jason Poe  
23 or anyone else at ESI what kind of training  
24 they had specifically to conducting a vent  
25 and burn on material that was undergoing

1 polymerization?

2 MR. BRAGA: Objection.

3 THE WITNESS: ESI provides a  
4 unique service. They basically have  
5 supported all Class I railroads in  
6 incidents involving cars that needed  
7 to be vent and burned.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Whose idea was it in connection  
10 with East Palestine derailment to select  
11 Jason Poe and ESI for the vent and burn  
12 operation?

13 A. There were several people. ESI  
14 is the Coca-Cola of folks that do this.

15 Q. Can you name the people who  
16 were involved in that decision?

17 A. In the decision --

18 Q. Yeah.

19 A. -- to bring ESI in?

20 Q. Yeah, to bring Jason Poe in.

21 A. There were conversations with  
22 Mr. Schoendorfer, myself, Drew, Terry  
23 Rockwell, Robert Wood, Scott Deutsch, Scott  
24 Gould. A plethora of folks.

25 Q. And to your knowledge, did any

1 of those folks understand that neither  
2 Mr. Poe nor ESI had experience with  
3 venting and burning materials that were  
4 actively undergoing polymerization?

5 MR. BRAGA: Objection.

6 MR. LEVINE: Objection.

7 THE WITNESS: ESI is the  
8 company that the Class Is go to when  
9 vent and burn operations have to be --  
10 take place on a car. It's not just  
11 specific to polymerizable material.

12 QUESTIONS BY MR. GOMEZ:

13 Q. But my question is, did any of  
14 those folks know that Mr. Poe and ESI had no  
15 experience before East Palestine with venting  
16 and burning materials that were undergoing  
17 active polymerization?

18 MR. LEVINE: Same objection.

19 THE WITNESS: That would --  
20 that would be a question for all those  
21 folks that I named.

22 QUESTIONS BY MR. GOMEZ:

23 Q. How about yourself?

24 MR. LEVINE: Same objection.

25 THE WITNESS: ESI is the go-to

1           company for vent and burn operations.  
2           Their expertise is in vent and burn  
3           operations, not polymerizable  
4           materials.

5       QUESTIONS BY MR. GOMEZ:

6           Q.       Same question for yourself, at  
7       least.

8                   Did you know at the time that  
9       you were discussing the East Palestine vent  
10      and burn operation with Mr. Poe that neither  
11      he nor ESI had any training with venting and  
12      burning materials undergoing polymerization?

13                   MR. LEVINE:   Objection.

14                   THE WITNESS:   As I said before,  
15      that part doesn't matter.   They're  
16      bringing a specific skill set to the  
17      site.

18      QUESTIONS BY MR. GOMEZ:

19           Q.       If Mr. Poe said that it  
20      mattered, would you disagree with him?

21                   MR. LEVINE:   Objection.

22                   THE WITNESS:   We would talk to  
23      him and understand what his concern  
24      is, yes.

25



1 QUESTIONS BY MR. GOMEZ:

2 Q. Are you aware that Mr. Poe gave  
3 an interview to the NTSB in connection with  
4 the East Palestine derailment?

5 A. We all talked to the NTSB, yes,  
6 sir.

7 Q. As you sit here today, are  
8 you -- are you aware of the fact that Mr. Poe  
9 said that ESI and he have no training on how  
10 to conduct a vent and burn when materials are  
11 undergoing active polymerization?

12 MR. BRAGA: Objection.

13 THE WITNESS: I don't -- didn't  
14 hear that Mr. Poe said that.

15 We're not bringing Mr. Poe in  
16 for his chemical expertise. We're  
17 bringing Mr. Poe in for the specific  
18 operation of applying explosives to  
19 tank cars.

20 QUESTIONS BY MR. GOMEZ:

21 Q. But you are bringing him in to  
22 conduct the explosive operation.

23 Right?

24 A. We bring him in to perform that  
25 function of setting up and performing the

1 vent and burn operation.

2 Q. And Mr. Poe has a right to  
3 accept or decline the assignment.

4 Right?

5 MR. LEVINE: Objection.

6 MR. BRAGA: Objection.

7 THE WITNESS: You're absolutely  
8 right.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Right.

11 So if Mr. Poe said that he  
12 would not conduct a vent and burn on  
13 materials that he knew were actively  
14 polymerizing, you wouldn't take any issue  
15 with that.

16 Right?

17 MR. LEVINE: Objection.

18 MR. BRAGA: Objection.

19 THE WITNESS: I would not ask  
20 him -- if he was uncomfortable doing  
21 it, yes, we would not ask him to do  
22 the job.

23 QUESTIONS BY MR. GOMEZ:

24 Q. Do you know that that's what he  
25 told the NTSB?

1 MR. LEVINE: Objection.

2 MR. BRAGA: Objection.

3 THE WITNESS: How would I know  
4 that? I didn't know it. How was I  
5 supposed to know that? You're telling  
6 me now.

7 QUESTIONS BY MR. GOMEZ:

8 Q. Well, you were a panelist on  
9 the investigative hearings.

10 Right?

11 A. I was, but Mr. Poe was not.

12 Q. Okay. Did you read any of the  
13 materials that were posted by the NTSB in  
14 preparation for your panel testimony?

15 A. I listened to -- I read mine,  
16 and that was pretty much it for the NTSB.  
17 I read -- reread and studied my testimony.

18 Q. So let me just ask it this way.

19 If Mr. Poe gave a statement to  
20 the NTSB where he said that he and his  
21 company had no training on venting and  
22 burning materials that were actively  
23 undergoing polymerization, and he would not  
24 have vented and burned materials actively  
25 undergoing polymerization, would you disagree

1 with him on that?

2 MR. LEVINE: Objection.

3 MR. BRAGA: Objection.

4 THE WITNESS: You're asking me  
5 to make an opinion of something that  
6 Mr. Poe said. I would have to read  
7 his document in order to form an  
8 opinion.

9 QUESTIONS BY MR. GOMEZ:

10 Q. And if that is his opinion,  
11 he's entitled to it.

12 Right?

13 A. That's correct.

14 Q. Okay. And you wouldn't  
15 disagree with him as the expert actually  
16 doing the explosive parts of the project.

17 Right?

18 MR. LEVINE: Objection.

19 THE WITNESS: One more time.

20 Mr. Poe and ESI are brought in to  
21 perform a certain function. If  
22 they're uncomfortable, they don't have  
23 to do the job.

24 QUESTIONS BY MR. GOMEZ:

25 Q. That assumes they're given all

1 the facts.

2 Right?

3 MR. BRAGA: Objection.

4 QUESTIONS BY MR. GOMEZ:

5 Q. Let me withdraw the question.

6 I'll ask a different question.

7 How could Mr. Poe have  
8 determined whether he was comfortable or not  
9 with venting and burning in East Palestine if  
10 he didn't know polymerization was actively  
11 underway in the cars?

12 MR. LEVINE: Objection.

13 THE WITNESS: You're asking --  
14 I don't know. How should I know? I  
15 don't know what he's thinking.

16 QUESTIONS BY MR. GOMEZ:

17 Q. And because you didn't tell him  
18 that the cars were polymerizing.

19 Right?

20 MR. BRAGA: Objection.

21 THE WITNESS: The reason the  
22 cars were vent and burned was because  
23 we believed the cars were undergoing  
24 polymerization.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. But you didn't tell that to  
3 Mr. Poe?

4 A. Mr. Poe knew that the cars were  
5 in dire straits and that we needed to vent --  
6 we just don't vent and burn cars just for the  
7 heck of it.

8 Q. So if Mr. Poe testified or  
9 stated to the NTSB that he didn't know the  
10 cars were polymerizing and wouldn't have  
11 vented and burned them if they weren't -- if  
12 they were polymerizing, he would be lying?

13 MR. BRAGA: Objection.

14 MR. LEVINE: Objection.

15 THE WITNESS: I would have to  
16 read Mr. Poe's testimony.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Okay. You didn't tell him that  
19 the cars were polymerizing. You told him  
20 that the pressure was building in the cars.

21 Right?

22 A. I don't remember the  
23 conversation that Jason and I have had over  
24 the course of the events leading up to him  
25 arriving on-site.

1           Q.       So you don't remember whether  
2   you told him specifically the cars are  
3   polymerizing or there's pressure building in  
4   the cars?

5           A.       That's correct, I do not  
6   remember.

7           Q.       We just touched upon the  
8   investigative hearings a little bit.

9                    You were on a panel with, among  
10 others, Drew McCarty.

11                   Right?

12          A.       That's correct.

13          Q.       And do you recall that there  
14 were questions that were asked of you by the  
15 NTSB and others regarding visual observations  
16 of the vent and burn that you and Mr. McCarty  
17 had made?

18          A.       It's been a while since I read  
19 it, but, vaguely, yes.

20          Q.       Where were you located at the  
21 time that the vent and burn was initiated?

22          A.       On the Brave Industry side,  
23 towards the tank farm -- or what became the  
24 tank farm, protected by the Brave Industries  
25 building where I could walk backwards from

1 the building and see the cars to the left.

2 Q. When you say "the cars," do you  
3 mean the VCM cars?

4 A. The derailment, yes, sir.

5 Q. And you used a term, phrase,  
6 there I'm not familiar with.

7 Was it tank farm?

8 A. It wound up being a tank farm  
9 where frac tanks were parked toward the  
10 parking lot of the Brave Industries.

11 Q. Is that like a staging point or  
12 something like that?

13 A. It's the other end of the Brave  
14 Industries building.

15 Q. Yeah, I just don't know what a  
16 tank farm is, if you would explain --

17 A. It's where a lot of tanks are.

18 Q. Okay.

19 A. Storage tanks.

20 Q. And who was with you in that  
21 location when the vent and burn was  
22 initiated?

23 A. The ESI folks, some CTH {sic}  
24 folks, the commissioner with a drone, and  
25 some of the SRS folks.



1 Q. You mentioned ESI folks.

2 Was Jason Poe there?

3 A. Yes, sir.

4 Q. And you said that you could see  
5 the derailment, but can you estimate for me  
6 just generally what your distance was?

7 A. Sir, I had a problem on-site.  
8 I didn't know which direction was east and  
9 which direction was west. I was turned  
10 around because we flew in.

11 The building -- let's just say  
12 200 yards from the front of the structure --  
13 100 yards from the front of the structure to  
14 the back of the structure. A quarter mile  
15 away. Probably 2,000, 2,500 feet.

16 Q. And from that distance when the  
17 vent and burn was initiated, you believe that  
18 you saw polymers ejected from the railcars.

19 Is that correct?

20 A. When we got permission to  
21 initiate the vent and burn, we had the first  
22 shot, which lit up the fuses. The next shot,  
23 I backed up, and I saw what I thought were  
24 sparklers coming out of the top of the  
25 western-most car.

1           Q.       Can you describe for me what  
2   you mean by sparklers?

3           A.       When the explosive charge, the  
4   high shot, the one that relieves the vapor,  
5   goes through and we precisionally drill a  
6   hole, gas pressure is released. Material  
7   comes up, and typically it just -- the fire  
8   goes up. Within a few seconds, the bottom  
9   shot is hit, and the liquid flows out and  
10  everything is consumed in fire. Just like it  
11  was in East Palestine.

12                  When it hit the top shot, I  
13  wanted to make sure we had ignition. I  
14  backed away from the Brave Industries  
15  building, and I saw materials coming out and  
16  going toward the ground.

17           Q.       Okay. Those -- I'm sorry. I  
18  didn't mean to interrupt you.

19           A.       I theorized that as -- I called  
20  them sparklers. I theorized that was  
21  polymer.

22           Q.       The materials that you've  
23  called sparklers and that you theorized were  
24  polymers, was it solid material?

25           A.       It seemed to be, yes, sir.

1 (Day Exhibit 10 marked for  
2 identification.)

3 QUESTIONS BY MR. GOMEZ:

4 Q. Let's pull up Document  
5 Number 44, which we'll mark as Exhibit 10 to  
6 Mr. Day's deposition.

7 And, Mr. Day, this Exhibit 10  
8 is also the exhibit -- or the Group D,  
9 Exhibit 54 to the NTSB hearings.

10 Right?

11 A. That's what it says, yes, sir.

12 Q. And according to the cover page  
13 prepared by the NTSB, it's "Figure 62,  
14 Hazardous Materials Group Chair's Factual  
15 Report, screenshot from NS contractor video  
16 taken from East Taggart Street near North  
17 Pleasant Drive looking north. Vent and burn  
18 of five vinyl chloride tank cars showing two  
19 material plumes visible about two seconds  
20 following detonation of explosive charges,  
21 February 6, 2022, 4:37 p.m."

22 Did I read that correctly?

23 A. Yes, sir.

24 Q. The date that's noted there,  
25 February 6, 2022, could we agree that

1     that's -- should be February 6, 2023?

2             A.       Yes, you can.

3             Q.       Okay. The photo that appears  
4     on the next page, that's a photo that the  
5     NTSB questioned you about at your panel  
6     hearing.

7                     Right?

8             A.       No, sir.

9             Q.       Was there -- I don't know what  
10    that was. Sorry.

11                    Was there a photo similar to  
12    this photo that you were questioned about by  
13    the NTSB?

14            A.       No, sir.

15            Q.       So it's your testimony that the  
16    NTSB never asked you any questions about  
17    these photos?

18            A.       This photo, no, sir.

19                    MR. BRAGA: Objection.

20    QUESTIONS BY MR. GOMEZ:

21            Q.       Okay. Does this photo that  
22    we're looking at here show what you observed  
23    to be the sparklers or solid material being  
24    ejected from the first shot of the vent and  
25    burn?

1           A.       Sir, all I see is a couple  
2 buildings, a truck, some black smoke and some  
3 white smoke.

4           Q.       So you don't know what's  
5 depicted in this photo at all?

6           A.       You are absolutely correct.

7           Q.       Again, Jason Poe was with you  
8 at the time of the operation.

9                    Right?

10          A.       Yes, sir.

11          Q.       We can put that aside, sir.

12                   And Jason Poe's the best there  
13 is at doing this operation.

14                   Right?

15          A.       That's correct.

16          Q.       And do you have a sense of how  
17 many vent and burns he personally has  
18 conducted before?

19          A.       A lot. That's all I can say.

20          Q.       Okay. Press you a little bit  
21 on that.

22                   Dozens?

23          A.       Let's just say I've been on 30,  
24 and he's been on all those, plus.

25          Q.       Plus the ones that you're not

1 on?

2 A. Correct.

3 Q. Okay. So in excess of 30.

4 Right?

5 A. Sure.

6 Q. You don't have any reason to  
7 disagree with his observations of the vent  
8 and burn.

9 Right?

10 MR. LEVINE: Objection.

11 THE WITNESS: As I said before,  
12 ESI is -- they are really, really good  
13 at what they do. Their task is vent  
14 and burn cars.

15 They're not chemists. They're  
16 not emergency responders when it comes  
17 to derailments. That's why we team  
18 folks together with them. They set  
19 the explosives. Our guys suggest  
20 locations because of -- for the  
21 setting of explosives.

22 QUESTIONS BY MR. GOMEZ:

23 Q. But if they're the best at  
24 conducting vent and burns, they know what to  
25 expect once they hit those shots off.

1 Right?

2 MR. LEVINE: Objection.

3 MR. BRAGA: Objection.

4 THE WITNESS: They're the best  
5 at what they do, setting off explosive  
6 charges and venting and burning cars,  
7 yes.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Okay. Do you ever speak to  
10 Mr. Poe about what he observed when he set  
11 off the first shot of the vent and burn?

12 A. I was sitting right beside --  
13 or standing right beside him.

14 Q. And what did Mr. Poe tell you,  
15 if anything?

16 A. We have ignition.

17 Q. Did he say anything about  
18 solids or polymers being ejected?

19 A. He did not.

20 Q. Okay. Are you aware that in  
21 the wake of the East Palestine derailment, he  
22 gave statements to the NTSB about what he  
23 observed being expelled or ejected from the  
24 tank cars once they were vented and burned?

25 A. As I said before, I haven't

1 read his testimony, no.

2 Q. So you don't know that he said  
3 there was no solid material ejected from the  
4 vinyl chloride cars upon initial ignition.

5 Right?

6 MR. LEVINE: Objection.

7 MR. BRAGA: Objection.

8 THE WITNESS: I would have to  
9 read it, and I have not spoke to him.

10 QUESTIONS BY MR. GOMEZ:

11 Q. If that's -- if that is what  
12 Mr. Poe experienced, that there was no solids  
13 or polymers ejected upon the initial shot of  
14 the vent and burn, would you have any reason  
15 to disagree with that?

16 MR. LEVINE: Objection.

17 MR. BRAGA: Objection.

18 THE WITNESS: I saw what I saw.  
19 He saw what he saw.

20 QUESTIONS BY MR. GOMEZ:

21 Q. And do you think it's within  
22 his expertise conducting explosive operations  
23 for vent and burns to understand whether  
24 solid materials were or were not coming out  
25 of that first shot?



1 MR. BRAGA: Objection.

2 MR. LEVINE: Objection.

3 THE WITNESS: ESI is the best  
4 at what they do, setting explosives,  
5 operating explosives.

6 After that, no.

7 QUESTIONS BY MR. GOMEZ:

8 Q. So once he hits the -- once he  
9 hits the detonator on that shot, that's the  
10 end of his expertise?

11 A. When we have ex -- ignition,  
12 correct.

13 Q. After the vent and burn had  
14 been conducted, it's my understanding that  
15 SRS provided a number of services, including  
16 forensic documentation of the site.

17 Is that correct?

18 A. No, sir.

19 (Day Exhibit 11 marked for  
20 identification.)

21 QUESTIONS BY MR. GOMEZ:

22 Q. Let's pull up Document 11 C,  
23 which we'll mark as Exhibit 11 to the  
24 deposition.

25 Sorry, Gina, 111 C.

1                   Mr. Day, this Exhibit 11 is a  
2   document produced by SRS. It's document SRS  
3   213.

4                   Do you see that in the bottom  
5   right-hand corner?

6           A.       Yes, sir.

7           Q.       And it appears to be an e-mail  
8   exchange.

9                   Right?

10          A.       That's correct.

11          Q.       Okay. The first e-mail appears  
12   at the bottom of the page. It's dated  
13   February 15, 2023, from Andy Shipe?

14          A.       Shipe.

15          Q.       Is that correct?

16          A.       That's correct.

17          Q.       Who is Andy Shipe?

18          A.       That is my boss's boss.

19          Q.       And who is your boss?

20          A.       Bobby Breed.

21          Q.       Bobby Breed. Okay.

22                   Mr. Shipe writes in this  
23   e-mail, "Can you give me an update on the  
24   train derailment? Who do we have there, and  
25   what are we doing?"

1 Is that correct?

2 A. That's what it says.

3 Q. And that e-mail, by looks of  
4 the response, was to Bobby Breed.

5 Right?

6 A. That is correct.

7 Q. And Bobby Breed responds also  
8 on February 15, 2023.

9 Right?

10 A. Yes, sir.

11 Q. And he says, "We are still  
12 on-site. Chip Day is running the operations  
13 and has three other special ops guys with him  
14 managing product transfers and railcar  
15 de-inventory."

16 Did I read that correctly?

17 A. There's a time with -- Andy  
18 Shipe's e-mail says February 15, 2023, at  
19 4:08, Shipe, Andy. And Bobby's response was  
20 Wednesday, 2/15/2023, at 4:03:55 UTC.

21 So Bobby's response is, what,  
22 five minutes before the -- Andy's e-mail.

23 Q. Well, that assumes that Andy  
24 Shipe's e-mail was also in UTC time.

25 Right?

1           A.       I have no idea. I'm just  
2     saying it's 4:08 versus 4:03, so I do not  
3     know.

4           Q.       Yeah. You don't know if what  
5     was produced by SRS is in UTC time or not.  
6                    Right?

7           A.       I'm just telling you that it  
8     says 4:03 on Bobby's response to a 4:08 Andy  
9     Shipe question.

10          Q.       And I'm just telling you that  
11    this is what was produced by your company.

12                   So do you have any reason to  
13    believe or think that this e-mail that we see  
14    at the top of the page from Bobby Breed to  
15    Andy Shipe providing the exact information  
16    that Andy Shipe requests at the bottom of the  
17    page is not a response?

18          A.       I don't know.

19          Q.       Okay.

20          A.       There's a time difference.

21          Q.       Let's talk about what the  
22    e-mail says, putting aside the time.

23                   Bobby Breed writes in this  
24    e-mail to Andy Shipe, "I'm addition."

25                   Can we agree that should be "in

1 addition"?

2 It's the last -- second to last  
3 e-mail of the e-mail.

4 A. Yes.

5 Q. "In addition, our crews are  
6 assisting with forensic documentation on the  
7 VCM cars and the damage done during the  
8 derailment."

9 Did I read that correctly?

10 A. That's what it says.

11 Q. Having read this e-mail from  
12 Bobby Breed, your boss, does that refresh  
13 your recollection as to whether you were  
14 doing -- or SRS was doing forensic  
15 documentation on the VCM cars after the vent  
16 and burn?

17 A. Wordsmithing? It could  
18 probably be done if you used a different  
19 word. Forensic documentation.

20 We wound up doing some air  
21 monitoring. We did some -- took parts off  
22 the car for the NTSB.

23 Q. You also documented the cars  
24 with pictures.

25 Right?

1           A.       We took some pictures, yes.

2                   We didn't document them.

3                   I have pictures of the cars,  
4   but -- and they were produced to you guys.  
5   But for -- a report or anything like that was  
6   not produced.

7                   (Day Exhibit 12 marked for  
8           identification.)

9   QUESTIONS BY MR. GOMEZ:

10           Q.       We can put this one aside, sir,  
11   and we'll pull up Document 142, which we'll  
12   mark as Exhibit 12 to the deposition.

13                   Mr. Day, the exhibit that we  
14   just marked, it's a text message exchange  
15   between you and Drew McCarty containing  
16   certain photographs.

17                   Is that a fair  
18   characterization?

19           A.       Fair characterization.

20           Q.       And the dates on these messages  
21   are all February 9, 2023.

22                   Right?

23           A.       Uh-huh. Yes, sir.

24           Q.       Now, the photos themselves are  
25   tough to see within the e-mail exchange, but

1 we've included them at the end, and they are  
2 SPSI TEXTS 289 through 292.

3 Do you see those, what looks  
4 like four enlarged images?

5 A. Yes, sir.

6 Q. And my question to you is, do  
7 you know who took these images?

8 A. Yes, sir, I should do.

9 Q. Who was it?

10 A. Me.

11 Q. And can you describe for me  
12 where you were when you took these photos?

13 A. These were taken while we were  
14 doing the air monitoring of the inside space  
15 of the car to allow us to escort NTSB  
16 into or -- and around the cars. Up to and  
17 around the cars.

18 Q. And were you physically within  
19 the tank?

20 A. No, I was taking high air  
21 monitoring from the top shot hole, holding  
22 the air monitor in, looking inside.

23 Q. Okay. So in terms of  
24 positioning the camera and actually taking  
25 the photographs, can you explain to me how

1     you -- how you did that?

2             A.       Climbed up on top of the car.

3             Q.       Uh-huh.

4             A.       Went to the hole. Dropped the  
5     air monitor in. Got the readings that we  
6     needed. Provided them to CTH {sic}. Looked  
7     in, saw what I thought was polymer, and took  
8     pictures.

9             Q.       And these images, were they  
10    taken from a personal camera or device or an  
11    SRS camera or device?

12            A.       On my phone.

13            Q.       Okay. And once you took those  
14    photos, you sent them off to Drew McCarty.

15                    Right?

16            A.       Correct.

17            Q.       About how long after you took  
18    them do you recall sending them?

19            A.       We'd have to pull it up from my  
20    phone.

21            Q.       Fair enough.

22                    But the reason you sent those  
23    pictures to Drew McCarty is because you  
24    thought that it showed polymer.

25                    Right?



1 A. Correct.

2 Q. And that's, in fact, why you  
3 say on the page that's marked 286 on the  
4 bottom right-hand corner, "Justice" --

5 A. Correct.

6 Q. -- with three exclamation  
7 points.

8 Correct?

9 A. Correct.

10 Q. And the conversation continues  
11 with a message from Mr. McCarty following the  
12 images, saying, "Inside of VC cars, question  
13 mark?"

14 Right?

15 A. That's what it says.

16 Q. Mr. McCarty is asking you, did  
17 you take these photos from inside the VCM  
18 cars.

19 Right?

20 A. Correct.

21 Q. And your response is, all  
22 capitals, "Inside," with two exclamations.

23 Right?

24 A. Yes, sir.

25 Q. He then follows up, "Hard to

1 tell from photos. Polymers, question mark?"

2 A. Correct.

3 Q. And you confirm, "Yes, sir."

4 Right?

5 A. That's correct, sir.

6 Q. Other than documenting what you  
7 believe to be polymer inside of the VCM cars  
8 with these photographs, did you do anything  
9 else to document what you found?

10 A. No, sir.

11 Q. You did not collect any of the  
12 polymer.

13 Right?

14 A. OxyChem -- Oxy Vinyls did.

15 Q. It's your understanding that  
16 OxyChem took samples what of we see in these  
17 photos?

18 A. No, sir. They took samples.

19 Q. Okay. So putting aside the  
20 separate samples that OxyChem took, I want to  
21 focus just on what we're looking at in these  
22 photos.

23 A. Okay.

24 Q. Did you do anything to take  
25 samples from the areas that are photographed

1 in this Exhibit 12?

2 A. No, sir.

3 Q. Did you do anything to preserve  
4 the condition of what you've documented in  
5 these photographs supposedly showing polymer?

6 A. No, sir.

7 Q. Instead of collecting -- let me  
8 withdraw that.

9 Did you alert anyone at NTSB  
10 about what you had observed and documented in  
11 these photos?

12 A. I believe I did, yes, sir.

13 Q. And who do you recall telling?

14 A. Some of the NTSB investigators  
15 when they were on the scene.

16 Q. Do you recall having any  
17 conversations with anyone at OxyChem about  
18 what you had seen and documented in these  
19 photos?

20 A. The three folks that were  
21 on-scene.

22 Q. So it's your understanding that  
23 they were still there on February 9, 2023?

24 A. There were folks there, or at  
25 least they were either there or they came

1 back when they pulled the samples. I think  
2 they came back.

3 Q. After these photos were taken,  
4 the VCM cars were decontaminated.

5 Right?

6 A. No, sir.

7 Q. The VCM cars were not pressure  
8 washed?

9 A. No, sir.

10 Q. If the NTSB has stated that  
11 they were pressure washed, do you disagree  
12 with that?

13 A. I do.

14 Q. Okay.

15 A. From when these pictures were  
16 taken, yes.

17 Q. What do you mean by that?

18 A. So the cars were clean. They  
19 were clear. We have air monitoring data  
20 through CTH {sic} that showed what the air  
21 monitoring data inside was, and there was no  
22 need to add additional water to an already  
23 muddy situation.

24 Q. Understood.

25 Okay. These cars that you

1 documented with these photographs were  
2 eventually wrecked.

3 Right?

4 A. Oh, they were wrecked, yes,  
5 sir.

6 Q. And --

7 A. In the derailment they were  
8 wrecked.

9 Q. They were wrecked in the  
10 derailment, and they were also broken apart  
11 to move them off-site.

12 Right?

13 A. I don't know. When I left,  
14 they were still whole.

15 Q. So you don't know what the fate  
16 was of what was left of the cars after you  
17 left the site.

18 Right?

19 A. I know the fate of the  
20 protective housings, and that's all -- that's  
21 all I know about the cars.

22 Q. Who would be the best person to  
23 ask about when, if at all, these cars were  
24 broken up and moved off of site?

25 A. Somebody that knows about the

1 decontamination or demolition of those cars,  
2 scrapping of those cars.

3 Q. Other than you personally, did  
4 anyone else from SRS collect samples of  
5 what's supposedly polymer in these  
6 photographs?

7 MR. BRAGA: Object to the form  
8 of the question.

9 THE WITNESS: There was no  
10 samples for SRS because we don't pull  
11 samples. There's no reason for it.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Well, you did know that one of  
14 the central questions about the East  
15 Palestine derailment was whether or not these  
16 cars were polymerizing.

17 Right?

18 MR. BRAGA: Objection.

19 MR. LEVINE: Objection.

20 THE WITNESS: I knew one of the  
21 issues was if it was polymerizing, but  
22 at this point, the VCM is gone, the  
23 cars are clear, and we're continuing  
24 on with the operations.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Do you think it's important for  
3 future rail incidents to understand whether  
4 or not the VCM in the cars in East Palestine  
5 were actually undergoing polymerization?

6 MR. BRAGA: Objection.

7 THE WITNESS: It would be nice  
8 to know, yes, sir.

9 QUESTIONS BY MR. GOMEZ:

10 Q. And one of the ways we could  
11 know that is if we had samples from inside  
12 the car.

13 Right?

14 A. Yes, sir.

15 MR. LEVINE: Objection.

16 QUESTIONS BY MR. GOMEZ:

17 Q. And we could certainly know  
18 that if we had samples of what you believe  
19 was polymer and decided to photograph but not  
20 collect.

21 Right?

22 MR. LEVINE: Objection to the  
23 form.

24 THE WITNESS: It's really  
25 simple for us all to sit here and

1 Monday morning quarterback what we  
2 should -- would have, should have,  
3 could have done. But you're  
4 absolutely right, we could have pulled  
5 samples. We could have had them  
6 analyzed. We had a whole a lot other  
7 operations that needed to take place.

8 QUESTIONS BY MR. GOMEZ:

9 Q. So is it your testimony that  
10 you just didn't have the time?

11 MR. LEVINE: Objection.

12 THE WITNESS: We had other  
13 things on our mind than taking samples  
14 of these cars. We believed it was  
15 polymer. The OxyChem representative  
16 that came back, that pulled the  
17 samples of where they wanted to take  
18 samples, pulled samples. Never heard  
19 what the analysis was.

20 The only joking thing they said  
21 was, don't drop any PVC resin in the  
22 car to make it look like polymer.

23 QUESTIONS BY MR. GOMEZ:

24 Q. You took these photos because  
25 you thought that what we were looking at is



1 polymer.

2 Right?

3 A. That's correct.

4 Q. Didn't Terry Rockwell want to  
5 send polymer to one of the executives at Oxy  
6 Vinyls to prove that polymerization was  
7 occurring in those cars?

8 A. I don't know. You'll have to  
9 talk to Terry about that.

10 Q. He never said that in front of  
11 you?

12 A. I don't recall.

13 Q. You don't recall him telling  
14 the folks from Oxy Vinyls who were there  
15 on-site that once they confirmed  
16 polymerization was occurring, they were going  
17 to collect all the PVC and send a care  
18 package to him?

19 A. That does not sound like Terry  
20 Rockwell.

21 Q. So if we have text messages  
22 where Terry Rockwell is asking you to collect  
23 PVC resin, it would be for some other  
24 purpose?

25 MR. BRAGA: Objection.

1 THE WITNESS: I'd have to see a  
2 text message from Terry asking to  
3 collect.

4 QUESTIONS BY MR. GOMEZ:

5 Q. Did you tell anyone from  
6 Norfolk Southern, by the way, that you had  
7 found what you believed to be polymer inside  
8 the cars?

9 A. I believe so.

10 Q. Who'd you tell?

11 A. I believe I told the Norfolk  
12 Southern, some of the folks, either Scott  
13 Gould -- or the people that we reported to, I  
14 believe we found some polymer. That's why I  
15 photo-documented it.

16 Q. And what was their response to  
17 that?

18 A. I don't remember.

19 Q. They didn't tell you to collect  
20 anything.

21 Right?

22 A. No, sir.

23 Q. They didn't tell you to take  
24 samples.

25 Right?

1           A.       I've already established that,  
2   yes, sir.

3           Q.       Right. You established that  
4   you didn't take samples.

5                   My question is, they didn't  
6   instruct you to take samples.

7                   Right?

8           A.       You are absolutely correct.

9                   MR. GOMEZ: Okay. Sir, I'm  
10   going to reserve what little time I  
11   have left and invite some of the other  
12   attorneys to ask you their questions.

13                  VIDEOGRAPHER: Off the record?

14                  MR. GOMEZ: Yes.

15                  VIDEOGRAPHER: The time is  
16   1:53 p.m., and we are going off the  
17   record.

18                  (Off the record at 1:53 p.m.)

19                  VIDEOGRAPHER: The time is  
20   2:03 p.m., and we're back on the  
21   record.

22                  DIRECT EXAMINATION

23   QUESTIONS BY MR. BYARS:

24           Q.       Good afternoon, Mr. Day. My  
25   name is John Byars. I'm with the law firm

1 Bartlit Beck, and I represent Trinity  
2 Industries in this lawsuit.

3 You've heard of Trinity  
4 Industries before.

5 Right?

6 A. Yes, sir.

7 (Day Exhibit 13 marked for  
8 identification.)

9 QUESTIONS BY MR. BYARS:

10 Q. Okay. I'm going to introduce  
11 another exhibit. This will be Exhibit 13.  
12 And this is to help orient us on what this  
13 derailment looked like.

14 And I'll just represent to you,  
15 Mr. Day, that this is a composite that's put  
16 together from pictures that were in the  
17 Hazardous Materials Group Chair's Factual  
18 Report, which was Exhibit B 10 to the NTSB  
19 hearing that you attended.

20 Have you seen these pictures  
21 before?

22 A. I've seen some -- a lot of  
23 overflight pictures of East Palestine.

24 Q. Does this look like a fair  
25 representation of the derailment site between

1 February 3rd and the time of the vent and  
2 burn?

3 A. Yes, sir.

4 Q. Okay. Now, I want to draw your  
5 attention to the box at the left-hand corner  
6 of the picture -- at the left-hand side of  
7 this document. And you'll see that it has  
8 car numbers, car types, and then line  
9 numbers.

10 A. Yes, sir.

11 Q. Do you see that?

12 A. Yes, sir.

13 Q. And the lines numbers that are  
14 in red in that box are the VCM cars.

15 Do you understand that?

16 A. Yes, sir.

17 Q. I want to draw your attention  
18 now to line number 28, which is TILX402025.

19 Do you see that in that box?

20 A. Line -- yeah, TILX402025, yes,  
21 sir.

22 Q. Right.

23 And if you look at it on the  
24 picture, it's the car -- you'll see Car 28  
25 almost at the end of the right side of this

1 picture.

2 Do you see it?

3 A. Yes, sir.

4 Q. Okay. And do you understand  
5 that to be the VCM car that was owned by  
6 Trinity?

7 A. Yes, because of the reporting  
8 marks.

9 Q. Okay. And if I refer to that  
10 as the "Trinity VCM car," will you understand  
11 that means TILX402025, which is line  
12 number 28?

13 A. Yes, sir.

14 Q. Thank you.

15 So are you aware that Norfolk  
16 Southern has sued Trinity in this lawsuit?

17 A. I found out yesterday.

18 Q. Have you ever seen the  
19 complaint that Norfolk Southern filed against  
20 Trinity?

21 A. No, sir.

22 Q. One of the things that Norfolk  
23 Southern says in the complaint is that  
24 discrepancies between the Trinity VCM car's  
25 AAR 42 Certificate of Construction and the

1 Trinity VCM car's actual characteristics  
2 existed.

3 Okay?

4 So they're saying that there  
5 were discrepancies between the Certificate of  
6 Construction of the Trinity's VCM car and the  
7 tank car's actual characteristics.

8 Do you know anything about that  
9 allegation?

10 A. No, sir.

11 Q. To your knowledge, did any  
12 supposed discrepancies between the Trinity  
13 VCM car's Certificate of Construction and its  
14 actual physical characteristics have anything  
15 to do with the vent and burn decision?

16 MR. LEVINE: Objection.

17 THE WITNESS: No, sir.

18 QUESTIONS BY MR. BYARS:

19 Q. To your knowledge, did any  
20 supposed discrepancies between any of the  
21 other VCM cars' Certificates of Construction  
22 have anything to do with a vent and burn  
23 decision?

24 A. No, sir.

25 MR. LEVINE: Objection.

1 THE WITNESS: Sorry.

2 QUESTIONS BY MR. BYARS:

3 Q. To your knowledge, did the  
4 supposed presence of aluminum in any of the  
5 VCM cars, including the Trinity VCM car, have  
6 anything to do with the vent and burn  
7 decision?

8 A. No, sir.

9 Q. Now, Trinity had nothing to do  
10 with the derailment.

11 Can we agree on that?

12 A. Sure.

13 Q. And Trinity had nothing to do  
14 with the vent and burn decision.

15 Correct?

16 A. That's correct.

17 Q. Would you say that the cars --  
18 the VCM cars operated as designed?

19 MR. LEVINE: Objection.

20 MR. BRAGA: Objection.

21 THE WITNESS: They were  
22 involved in a derailment, and they did  
23 not blow up.

24 QUESTIONS BY MR. BYARS:

25 Q. So is it fair to say that they



1 operated as designed?

2 MR. LEVINE: Objection.

3 THE WITNESS: Loosely, yes.

4 QUESTIONS BY MR. BYARS:

5 Q. In fact, that's something that  
6 you said not long after the derailment.

7 Right?

8 A. Yes, sir.

9 Q. Okay. And you believed that  
10 the Trinity VCM car was stable prior to the  
11 vent and burn.

12 Correct?

13 A. The Trinity VCM car was the  
14 first VCM car in line, and it's the one that  
15 we were able to put a pressure gauge on and  
16 wanted to possibly get it slid out of the  
17 way, into the clear, before the vent and burn  
18 operation took place.

19 Q. And you were willing to try and  
20 do that because you believed it was stable.

21 Is that right?

22 A. Yes, sir.

23 Q. And you knew that because of  
24 the pressure gauge.

25 Right?

1           A.       The pressure gauge and the lack  
2   of extremely deep burn, heat, scorching on  
3   that car, yes, sir.

4           Q.       Okay. And when you arrived at  
5   the derailment site on the morning of  
6   February 5th, were there any pool fires that  
7   the Trinity VCM car was in?

8           A.       There were some fires burning  
9   backwards and flashing back and forth in the  
10   ballast rock underneath the Trinity car, but  
11   nothing sustained.

12          Q.       Okay. Anything that would keep  
13   you from entering the area in order to  
14   inspect the Trinity rail -- the Trinity VCM  
15   car?

16          A.       We performed --

17                   MR. BRAGA: On the same day?

18                   MR. BYARS: Yeah, talking  
19   about -- sorry. Let me ask the  
20   question so it's clear.

21   QUESTIONS BY MR. BYARS:

22          Q.       The morning of February 5th  
23   when you get there, any pool fires under the  
24   Trinity VCM car that would have kept you from  
25   inspecting the Trinity VCM car?

1           A.       There were some fires flashing  
2 back and forth in the ballast rock, like I  
3 said. And we walked up to the car on that  
4 day, I can't tell you exactly when, to  
5 perform a damage assessment on that car.

6           Q.       Okay. So the fires that were  
7 flashing back and forth on the ballast rock  
8 didn't keep you from performing your  
9 inspection?

10          A.       That's correct.

11          Q.       And when you say "on the  
12 ballast rock," can you identify on Exhibit 13  
13 what you -- what you're referring to?

14          A.       So to understand railroad  
15 tracks, there's the rail, there's the ties,  
16 and then there's ballast rock.

17                   There was a lot of water flowed  
18 on the derailment site trying to extinguish  
19 fires, so there was a layer of water. There  
20 was a layer of flammable liquids, very thin  
21 layer of flammable liquids, moving around on  
22 the site. And just the nature of flammable  
23 liquids, ground heated begins to off-gas  
24 flammable vapors, finds an ignition source  
25 and flashes.

1                   And we have -- it's a common  
2   phenomenon in derailments. We have ballast  
3   rock flash fires moving up and down the  
4   ballast rock.

5           Q.       And will you just identify on  
6   the picture the ballast rock so that I'm  
7   clear?

8           A.       It's the rock that the railroad  
9   track was sitting on.

10          Q.       So if I'm looking at Car 28 in  
11   the label 28 --

12          A.       It's laying on the track, on  
13   the ties, on the rock. The ballast rock is  
14   what the ties, the train track, sits on.

15          Q.       Okay. Thank you.

16                   So after the morning -- well,  
17   strike that.

18                   We established -- or you  
19   testified earlier today that there was about  
20   48 hours between the extended PRD release on  
21   February 4th and the vent and burn on  
22   February 6th.

23                   Do you recall that?

24          A.       There's a discussion on time.  
25   I've not sat down and looked at a clock and

1     figured out exactly how far it was. But to  
2     make this thing move along, somewhere around  
3     24 to 48 hours, yes.

4             Q.       So during -- and within that  
5     time period is when you arrived on Sunday --  
6     on Sunday morning, February 5th.

7                     Correct?

8             A.       Correct.

9             Q.       All right. Was there ever any  
10    time between the time that you arrived at the  
11    derailment site on the morning of  
12    February 5th and the vent and burn where  
13    conditions ever deteriorated so that you had  
14    to withdraw everyone from the derailment  
15    site?

16            A.       I -- when I was there, I don't  
17    remember any.

18            Q.       Now, we touched briefly on the  
19    fact that there was an attempt to move the  
20    Trinity VCM car.

21                     Correct?

22            A.       There was discussion, yes, sir.

23            Q.       There was discussion.

24                     And can you tell me why it was  
25    ultimately decided not to move the Trinity

1 VCM car?

2 A. So on the night of  
3 February 5th, Cranemasters and Hulcher were  
4 sitting up equipment in front of Leake Oil in  
5 preparation for train wrecking operations.

6 We needed to move several cars  
7 to the east of the derailment in order to  
8 build a containment for the pending vent and  
9 burn operation.

10 Due to the limited damage to  
11 the TILX car, which we call it the white car,  
12 the train wreckers came in, they looked at  
13 all the cars, they knew they could move  
14 the covered hopper cars. They came up and  
15 performed a wrecking operation/damage  
16 assessment on the Trinity car.

17 And I'm not sure how long that  
18 took, but they -- late that night, they  
19 surmised that they could not move that car  
20 due to bolster damage and -- just bolster  
21 damage. They couldn't get it rolled up and  
22 picked up without impacting the other cars,  
23 the other VCM cars.

24 Q. Can you explain that a little  
25 bit more, how this bolster damage would have

1 possibly impacted the other VCM cars?

2           A.       The couplers were -- I believe  
3 the couplers were still attached between the  
4 28 car and the 29 car. That's the way the  
5 train was set up. In a derailment, cars pass  
6 each other.

7                   The wrecking contractors were  
8 not comfortable hooking on to that car and  
9 sliding it out of the way.

10                   I personally was not on-site.  
11 I was just advised that they could not move  
12 that car.

13           Q.       And when you say "wrecking  
14 contractors," will you tell me who again that  
15 was?

16           A.       That was Crane -- on that end  
17 of the derailment, Cranemasters and Hulcher,  
18 H-u-l-c-h-e-r, and the opposite end was  
19 Corman. Opposite end of the derailment was  
20 Corman.

21           Q.       And can you tell me who gave  
22 you this information regarding TILX402025?

23           A.       I do not remember who called  
24 me.

25           Q.       All right. So you don't recall

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1 who called from you Hulcher or Cranemasters?

2 A. I don't know if it was them.

3 It may have been the nighttime SPSI manager.

4 Somebody told me that they were not

5 comfortable moving that car.

6 Q. So probably best for me to talk

7 to somebody from Hulcher or Cranemasters

8 about that.

9 Fair to say?

10 A. Most likely.

11 Q. Okay. And you don't have any

12 pictures showing that bolster damage, by any

13 chance?

14 A. I presented everything -- all

15 the pictures that I have.

16 Q. Okay. Thank you.

17 The next thing I wanted to ask

18 you about real quick. You had mentioned that

19 you didn't -- that water was not applied to

20 the VCM cars on February 5th and 6th because

21 they still had their jackets on.

22 Is that correct?

23 A. That's correct.

24 Q. And the idea there is that

25 because they had their jackets on, the water



1 wouldn't cool the cars.

2 Is that correct?

3 A. It wouldn't be able to get to  
4 the shell.

5 Q. Okay. And is there a basis for  
6 you believing or testifying that you have to  
7 have water on the shell in order for the car  
8 to be cooled?

9 MR. LEVINE: Objection.

10 THE WITNESS: That basically  
11 just goes back to firefighting 101.  
12 If you're trying to cool a product  
13 that's inside, under four inches of  
14 insulation, under an eighth-inch  
15 jacket, under a half-inch of thermal  
16 protection, you must get the cooling  
17 material to the shell, not on the  
18 jacket.

19 QUESTIONS BY MR. BYARS:

20 Q. And is that something that  
21 you're taught in firefighting school?

22 A. Firefighting school and the  
23 Pueblo classes.

24 Q. The Pueblo classes.

25 Okay. And what's the most

1 recent Pueblo class that you had where that  
2 particular concept was taught?

3 A. Any of the fire training  
4 classes at Pueblo, any fire training classes  
5 involving tank cars, crude by rail, ethanol  
6 by rail. It's a -- it's a common theme.

7 Q. The only thing, Mr. Day, I'll  
8 tell you that I'm struggling with a little  
9 bit is that there seems to be a consensus  
10 that heat can be transferred from a pool  
11 fire, through a jacket, into the material  
12 inside the car. So I'm having trouble  
13 understanding why a car can't be cooled by  
14 applying water to the jacket and trying to  
15 move heat off of it that way.

16 A. I'm not a thermal dynamics  
17 expert, but basically in a pool fire, heat is  
18 absorbed in the steel, deteriorates  
19 insulation. The jacket and the insulation  
20 protect the shell, the product, from the  
21 outside environment.

22 Once the insulation is  
23 compressed, once the insulation is destroyed,  
24 damaged, due to fire, then you start getting  
25 heat transfer through.

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1 Heat transfer is a lot easier  
2 than water transfer.

3 Q. Okay.

4 A. We can rip the jackets off but  
5 also take -- it's also a very risky business  
6 to put folks up on cars with active fires.

7 Q. So is it possible that the  
8 jackets were deteriorated to the point where  
9 if there had been water applied to the cars,  
10 there could have been some cooling effect?

11 A. You're asking me to speculate,  
12 and I try not to. I've been advised not to  
13 speculate. It is what it is or it isn't.

14 Q. Sitting here today, though, you  
15 can't tell me with certainty that there  
16 couldn't have been some cooling effect to  
17 applying water to the cars?

18 A. That's your opinion. I have my  
19 own opinion.

20 Q. Now, you also said that there  
21 were some fires that were burning in the  
22 protective housings of two of the VCM cars?

23 A. Three of the VCM cars.

24 Q. Three of the VCM cars.

25 Now, they weren't burning in

1 the TILX402025 car.

2 Right?

3 A. You are absolutely correct.

4 Q. Did you -- was there ever any  
5 consideration given to putting out those  
6 fires?

7 A. Consideration, yes. However,  
8 if you go back to the SDS and firefighting  
9 101, if you extinguish fires, you must be  
10 able to control the release.

11 Q. Okay. I don't understand that.

12 What do you mean -- what does  
13 extinguishing fires and protective housings  
14 have to do with controlling the release?

15 A. Didn't you just say, if you --  
16 can you -- could you have gone in and put out  
17 the fire?

18 Q. Yeah. Yes. I was asking could  
19 you put out the fire on the protective  
20 housings of the three cars.

21 A. Most definitely, yes, sir.

22 Q. Okay. How would you have done  
23 that?

24 A. Fire extinguisher.

25 Q. And why didn't you do that?

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1           A.       Because you have -- if you go  
2   to the SDS and you go to the New Jersey  
3   document that we spoke of earlier, you must  
4   be able to control the release.

5                   For some reason, those  
6   protective housings are on fire. That means  
7   it's releasing material. Something from  
8   inside the car is leaking through, and you  
9   have fire.

10                  Now, if you go up there and  
11   extinguish it, you must be able to control  
12   those vapors that are coming out that used to  
13   be on fire. Now you have an uncontrolled  
14   flammable gas release.

15                  Flammable gas -- VCM is heavier  
16   than air. It flows off the side of the car,  
17   gets to the ground, reaches out in fingers  
18   and finds pockets. Once those pockets get  
19   accumulated enough, it finds an ignition  
20   source and flashes back.

21           Q.       So your concern was -- I think  
22   I understand what you're saying now.

23                  My understanding is that your  
24   concern was that if you put out those fires  
25   that were in those protective housings, then

1 you would just have gas that would pour over  
2 the top, go down the side of the -- of the  
3 cars.

4 Is that right?

5 A. And find an ignition source.

6 Q. Find an ignition source. Okay.

7 Which of the three cars had  
8 protective housings -- well, sorry, had fires  
9 still burning in the protective housings, if  
10 you refer to Exhibit 13?

11 A. 55, 31 and 30.

12 Q. Okay.

13 A. I believe those are the ones.

14 Q. Thank you.

15 Now, you also said that there  
16 were these fires that were in the -- what did  
17 you call it, the ballast rocks?

18 A. Yes, sir.

19 Q. Was there any attempt made to  
20 put those fires out?

21 A. Those fires flashed, and it  
22 went away. They flash. They went away. It  
23 wasn't a constant fire. It was fed by the  
24 fire underneath the biggest pile of cars.

25 Q. Okay. And when you say "the

1 fire underneath the biggest pile of cars,"  
2 can you identify that for me on Exhibit 13?

3 A. From 31 going toward 44, 45.

4 Q. Okay. Was there ever any  
5 attempt made to put the fire out underneath  
6 those cars?

7 A. Multiple times.

8 Q. And can you describe those  
9 attempts to me?

10 A. This might sound like a smart  
11 ass. Laid a fire hose out, hooked up -- put  
12 a nozzle on it, pressurized it with water,  
13 opened the nozzle, sprayed foam, put out  
14 fire. Fire flashed back.

15 The problem we have is, these  
16 kind of fires, with all this equipment on  
17 top, all these cars, all this material,  
18 there's spot fires everywhere. As those spot  
19 fires continue to burn, it's heating other  
20 things, some of the stuff that you wouldn't  
21 expect to burn, some of the lube oils and  
22 stuff like that.

23 So you go in, you put the fire  
24 out, then it would flash back.

25 Q. When were those attempts made

1 to put the fire out that was under the pile  
2 with water?

3 A. Several times during the entire  
4 operation, leading up to and after the vent  
5 and burn.

6 Q. Okay. So while you were there  
7 from the time that you arrived at the  
8 derailment site on the morning of  
9 February 5th until the vent and burn on  
10 February 6th, did you personally witness the  
11 attempts to put out that fire?

12 A. I don't recall.

13 Q. What about the use of foam to  
14 put out that fire? Was that ever tried? Do  
15 you know?

16 A. That would be for the fire  
17 service and for SPSI. I know foam was used  
18 at times.

19 Q. Do you know when it was used?

20 A. During the wrecking operation.

21 Q. Did you ever personally observe  
22 it being used?

23 A. I saw -- I flowed a lot of  
24 water, but not a lot of foam.

25 Q. Was there any time where you



1 ever saw unmanned hoses, water hoses, set up  
2 to train water on the derailment?

3 A. There's a lot of pictures from  
4 the night -- the night of the incident, and  
5 there were times during the vent and burn  
6 operation where unmanned monitors were set  
7 up, and then during the wrecking operations  
8 after the vent and burn.

9 Q. And that's actually the term I  
10 was looking for, "unmanned monitors." I  
11 couldn't remember that.

12 Those are the unmanned water  
13 hoses.

14 Right?

15 A. Correct.

16 Q. Were there any unmanned water  
17 hoses set up between the time that you  
18 arrived on the morning of February 5th and  
19 the vent and burn?

20 A. There were.

21 Q. And where were those set up?

22 A. To protect Leake Oil and I  
23 believe Brave Industries and the blue  
24 building.

25 Q. Were there any that were set up

1 so that the water was being aimed at the  
2 derailment site?

3 A. The water was used to protect  
4 the structures.

5 Q. So there was no water that was  
6 being put onto the derailed cars from these  
7 unmanned monitors.

8 Is that correct?

9 A. Correct.

10 Q. And do you know why there was  
11 no water being aimed at the derailed cars  
12 from these unmanned monitors during that  
13 time?

14 A. Some of it may have been trying  
15 to reduce the flow of water downstream. It  
16 was washing contamination away from the site.

17 Q. Did anybody ever tell you that?

18 A. It was obvious.

19 Q. Did you ever discuss that with  
20 anybody?

21 A. I wasn't there for an  
22 environment -- for environmental issues. I  
23 was there for compressed gas cars.

24 Q. Did you ever hear anyone  
25 discussing that?

1           A.       There's -- the cleanup is still  
2 going on, so obviously there's been a lot of  
3 discussion about it.

4           Q.       Okay. When you were there from  
5 the morning of February 5th until the vent  
6 and burn, did you ever hear anyone discussing  
7 not putting water on the derailment site  
8 because of the flow of water downstream that  
9 would result?

10          A.       Is that a question?

11          Q.       Yes.

12          A.       Could you restate it?

13          Q.       I sure can.

14                   When you were at the derailment  
15 site from the morning of February 5th until  
16 the vent and burn, did you ever hear anyone  
17 discussing not putting water on the  
18 derailment site because of the flow of water  
19 downstream that would result?

20          A.       No.

21          Q.       Do you think that if there had  
22 been water -- strike that.

23                   Do you think if there had  
24 been -- if the unmanned monitors had been  
25 used to put water on the derailment site from

1 the morning of February 5th until the vent  
2 and burn, that that could have had a cooling  
3 effect on the VCM cars?

4 MR. BRAGA: Objection.

5 THE WITNESS: As I previously  
6 stated, applying water to jackets does  
7 nothing to cool product.

8 QUESTIONS BY MR. BYARS:

9 Q. What if you're -- what if the  
10 water is being applied to the -- to the  
11 ballast rock or to the fire that was  
12 underneath cars from, I think you said, 31 --  
13 Car 31 to Car 45? Would there have been a  
14 cooling effect on the VCM cars then?

15 MR. LEVINE: Objection.

16 THE WITNESS: You can't apply  
17 water to a jacketed car and expect  
18 cooling to take place.

19 QUESTIONS BY MR. BYARS:

20 Q. I guess I'm asking, what if you  
21 weren't applying the water to the jacketed  
22 car but instead were applying it to what the  
23 car was sitting on?

24 A. You're asking me for  
25 speculation. I'm not going to speculate.

1           Q.       So -- all right. If you had to  
2     guess, and I know you don't like to do this,  
3     but what would be your guess as to whether  
4     that would have had any cooling effect on the  
5     VCM cars?

6                   MR. BRAGA: Objection.

7                   You can go ahead and guess.

8                   THE WITNESS: I hate to guess.

9           It possibly could. It possibly could  
10    not.

11   QUESTIONS BY MR. BYARS:

12           Q.       Sitting here today, you can't  
13    tell me that there would not have been a  
14    cooling effect had water been applied to the  
15    areas underneath the VCM cars?

16                   MR. LEVINE: Objection.

17                   THE WITNESS: Pumping water on  
18    a jacketed car does virtually no help  
19    to cool -- the cooling. It's been  
20    proven dozens of times in incidents  
21    across the country involving jacketed  
22    cars.

23   QUESTIONS BY MR. BYARS:

24           Q.       What about pumping water to the  
25    area that the cars are sitting on?

1 MR. LEVINE: Same objection.

2 QUESTIONS BY MR. BYARS:

3 Q. Would that have a cooling  
4 effect?

5 A. It would possibly put out fire,  
6 possibly wash contamination downstream.

7 Q. Were there any -- let's look at  
8 Car 55 real quick.

9 You see Car 55 on Exhibit 13?

10 A. Yes, sir.

11 Q. And do you see Car 54, which is  
12 right up against Car 55?

13 A. I do see that.

14 Q. Do you recall if Car 54 was on  
15 fire?

16 A. It was a smoldering fire, yes,  
17 sir.

18 Q. Was any water ever applied to  
19 Car 54?

20 A. No, there was not. Not until  
21 the end.

22 Q. When you say "until the end,"  
23 when was that?

24 A. When the wrecking operation got  
25 up to that car.

1 Q. So that was after the vent and  
2 burn?

3 A. That was after the vent and  
4 burn.

5 Q. So before -- or from the  
6 morning of February 5th when you arrived at  
7 the derailment scene until the vent and burn,  
8 there was no water that was put on Car 54.

9 Is that right?

10 A. That is correct.

11 Q. And why is that?

12 A. We were -- I mean,  
13 environmentally, any water you flow on that  
14 car is going to go to the ground, and it's  
15 going to wash more contamination downstream.  
16 And the environmental folks had a heck of  
17 problem going on with contamination getting  
18 off-site.

19 Q. So were you instructed not to  
20 put water on that car because of the possible  
21 runoff?

22 A. I was not.

23 MR. LEVINE: Objection.

24 QUESTIONS BY MR. BYARS:

25 Q. Did you make the decision not

1 to put water on that car because of possible  
2 runoff?

3 A. I -- sir, I was there for the  
4 compressed gas cars, the five VCM cars and  
5 the one isobutylene car.

6 Q. If water had been put on  
7 Car 54, would it have cooled Car 54 down?

8 MR. LEVINE: Objection.

9 THE WITNESS: It's possible.

10 QUESTIONS BY MR. BYARS:

11 Q. And if water had put -- if  
12 Car 54 had been cooled down, is it possible  
13 that Car 55 would have cooled down as well?

14 MR. LEVINE: Objection.

15 THE WITNESS: It's very  
16 possible.

17 QUESTIONS BY MR. BYARS:

18 Q. What about foam? Was foam ever  
19 considered to be put on Car 54?

20 A. I don't remember what was in  
21 Car 54 that was burning.

22 Q. So do you not recall whether it  
23 was ever considered to put foam on Car 54?

24 A. I don't know what was in  
25 Car 54, so I wouldn't ever know what was



1 going to be -- could be used to extinguish  
2 the fire.

3 Q. Do you know what the condition  
4 of the valves were on the Car 28? That's the  
5 Trinity VCM car.

6 A. They must have been in really  
7 good shape, because they were able to hook up  
8 to the -- either the vapor valve or the  
9 sample port and get a gauge pressure on it.

10 Q. Would it have been possible to  
11 transfer the VCM inside of Car 28 through one  
12 of those valves?

13 MR. BRAGA: Objection.

14 THE WITNESS: Anything is  
15 possible.

16 QUESTIONS BY MR. BYARS:

17 Q. Did you con -- did you consider  
18 doing that?

19 A. We had to have a place to go  
20 with the material, which means we either had  
21 to have tank cars or tank trucks, and then we  
22 had to have a place to go with that material  
23 that was going to accept it.

24 And there's still the potential  
25 for it to be a reactive material, which means

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1 we would have to put it on a road or put it  
2 on railroad tracks and taken it -- let's just  
3 say OxyChem -- Oxy Vinyls accepted that  
4 material back to Houston. We would have had  
5 to road that stuff all the way back.

6 Q. Do you know if anyone tried to  
7 obtain a tank car that the VCM from Car 28  
8 could have been transferred to?

9 A. I have no idea.

10 Q. Do you know if anyone tried  
11 to -- or tried to find someone who would  
12 transport a tank car filled with VCM that had  
13 been transferred from Car 28?

14 A. The transfer to a receiving car  
15 or truck is one part of the puzzle, but  
16 there's several other steps that's got --  
17 that have to be made in order to get that  
18 done, yes, sir.

19 I don't -- I don't know of  
20 anyone that looked for transportation  
21 services.

22 Q. Okay. And did you ever talk to  
23 OxyChem about the possibility of transferring  
24 VCM from Car 28 into a tank car?

25 A. The plan was to -- the initial

1 plan when wrecking operations started  
2 Saturday night were to move that car out and  
3 get it into the clear and perform the vent  
4 and burn operation on the other four cars.

5 Q. Do you recall how far you were  
6 planning to move Car 28 into the clear,  
7 assuming you had been able to do so?

8 A. Down yonder. We were -- we  
9 were moving it across the tracks toward the  
10 Leake Oil side and down the way to get it  
11 away from the fire from the vent and burn.

12 Q. Can you give me an estimate  
13 just in terms of yards?

14 A. Several hundred.

15 Q. I like the down yonder, by the  
16 way. That sounds like a technical term from  
17 Texas.

18 All right. So several -- you  
19 were looking to move it several hundred yards  
20 down towards Leake Oil. All right.

21 A. No, it was across from Leake  
22 Oil --

23 Q. Sorry.

24 A. -- so away from Leake Oil, on  
25 the Leake Oil side.

1           Q.       Aside from Car 54, were there  
2 any other non-VCM cars that were on fire  
3 between February 5th when you arrived at the  
4 derailment and the time of the vent and burn?

5           A.       You see the smoke in the pile?

6           Q.       I do see that.

7           A.       There you go.

8           Q.       Do you know which cars those  
9 were, by any chance?

10          A.       Jokingly, all of them.

11          Q.       Okay.

12          A.       There's stuff on fire, and  
13 basically all of those cars are --

14          Q.       Were those jacketed cars?

15          A.       The general service cars, I  
16 don't believe were. I'd have to go each  
17 individual car and look at it. There's not  
18 jackets on every car.

19          Q.       So we can actually look at  
20 Exhibit 13 here and look at the table on the  
21 left side, and that may help us.

22                    So as we've talked about  
23 already, the VCM cars are denoted in red on  
24 their line numbers.

25                    And then I think that you had

1 mentioned Cars 32 to 45 having fire around  
2 them. That's the general area of that smoke.

3 So from Cars 32 to 45, can you  
4 look at Exhibit 13 and tell me if any of  
5 those cars are jacketed cars?

6 A. Okay. So Car 49 is a DOT  
7 105J300W car. That's an isobutylene car.

8 Q. Okay.

9 A. That's a jacketed car. Because  
10 that J means it's jacketed.

11 The unfortunate part when it  
12 gets to general service cars, 111A100W1 cars,  
13 could or could not have jackets. There's  
14 no differentiation. It doesn't put a J in  
15 there to tell us, so you have to look at each  
16 individual car.

17 Q. The hop --

18 A. The 117J100W is a jacketed car  
19 because it's got a J in that. However, the J  
20 does not always mean it's got a jacketed --  
21 or excuse me. J means it has a jacket. The  
22 A does not always dictate that it has a  
23 jacket.

24 Q. And then what about Car 42,  
25 which was AAR 211? I'll omit the rest of the

1 numbers and letters. Was that a jacketed  
2 car?

3 A. A 111A is the same as a DOT  
4 211A. It could have a jacket. It could not  
5 have a jacket.

6 Q. Okay. And the hopper cars  
7 weren't jacketed.

8 Is that right?

9 A. The hopper cars are hopper  
10 cars.

11 Q. Okay. So if any of the hopper  
12 cars were the sources of those fires, could  
13 have applied water to those, and those fires  
14 might have gone out.

15 Is that right?

16 A. And the risk of another PRD  
17 going off, now you have firefighters, first  
18 responders, in, setting up unmanned monitors  
19 and streams, pumping water to it, washing  
20 contamination down the stream. And the setup  
21 is -- it's a risk-based determination that  
22 we're not going to apply water.

23 Q. Well, how long does it take to  
24 set up an unmanned monitor?

25 A. Depends on how far we have to

1 lay and the wind effect on the monitors we  
2 can set up.

3 In one side, we could be  
4 flowing 10,000 gallons a minute on the car  
5 from a long distance away. But the City of  
6 East Palestine doesn't have the water supply  
7 for a 10,000 GPM operation.

8 Q. How long would it have taken to  
9 set up unmanned monitors on this pile of cars  
10 from Car 32 to Car 45?

11 A. Most likely several hours.

12 Q. Was there any point in time  
13 from the time that you arrived on the morning  
14 of February 5th until the vent and burn when  
15 personnel were absent from the derailment  
16 site for several hours?

17 A. There were a lot of times.

18 Q. So there were times when nobody  
19 was at the derailment site?

20 A. That's correct.

21 Q. Okay. Were there times when  
22 people were present at the derailment site  
23 for several hours?

24 A. There were a lot of operations  
25 going on, so people were in and out.

1 Q. And were there -- was there  
2 ever anyone who was there for a period of,  
3 say, 30 minutes?

4 A. Possibly.

5 Q. How about an hour?

6 A. Possibly.

7 Q. Two hours?

8 A. Oh, my God. Okay. We can --  
9 we can go down this road as far as you want  
10 to go. An hour, two hours, three hours.  
11 We -- there was a lot of work going in, being  
12 done and coming back out, gathering data,  
13 gathering information, making plans.

14 Q. So just -- I understand,  
15 Mr. Day, that this can be frustrating, and  
16 for that I apologize. I'm not trying to  
17 frustrate you.

18 But is it possible that there  
19 were people who were there for a span of two  
20 hours at the derailment site?

21 MR. LEVINE: Objection.

22 THE WITNESS: There was --  
23 there was a very delicate balance  
24 between risk management and getting  
25 information and us planning what we



1           can do next, what is safe for the  
2           folks to do.

3                       So crews would go in, they  
4           would take some air monitoring  
5           readings. There were crews that would  
6           go in, take temperatures. There were  
7           crews that would go in to try to do an  
8           assessment from a different angle.

9                       There's a lot of operations  
10          going on simultaneously. Crews are  
11          going in and out.

12       QUESTIONS BY MR. BYARS:

13               Q.       So can you tell me, sitting  
14       here today, that from the time that you  
15       arrived at the derailment site on the morning  
16       of February 5th until the vent and burn, that  
17       there was never anyone who was at the  
18       derailment site for two hours?

19                       MR. LEVINE: Objection.

20                       THE WITNESS: The longest time  
21       that I personally know folks were on  
22       scene is when we were setting up the  
23       explosives.

24       QUESTIONS BY MR. BYARS:

25               Q.       Okay. And how long did that

1 take?

2 A. About three and a half hours.

3 Q. So you were setting up the  
4 explosives for about three and a half hours.

5 Were there also pits being dug  
6 at that point?

7 A. The previous night, yes, sir.

8 Q. The previous night.

9 Can you identify for me on  
10 Exhibit 13 where pits were being dug?

11 A. Car 27 was moved to the east,  
12 and there was a pit -- or a containment built  
13 that would hold around 158 to 160,000 gallons  
14 of fluid, using natural ground curvature to  
15 build a containment area around the pile of  
16 four VCM cars and a channel to the Brave  
17 Industries side of the tracks to funnel the  
18 liquid from Car 55 away and prevent it from  
19 getting toward the isobutylene car to the  
20 east.

21 Q. And so the pit, if I'm  
22 understanding correctly, that was around  
23 where Car 27 appears on Exhibit 13?

24 A. It incorporated -- 27 was out  
25 of the way. It incorporated 28, 29, 30 and

1 31.

2 Q. Do you know about how long it  
3 took to construct that pit and the  
4 containment area around the pile of the four  
5 VCM cars?

6 A. I was in bed. No, sir.

7 Q. Probably something I should  
8 ask. Was it Hulcher and -- well, strike  
9 that.

10 Well, do you know who was  
11 responsible for doing that work?

12 A. I do not.

13 Q. Would it have been Hulcher's?

14 A. It could have been Hulcher. It  
15 could have been Cranemasters. It could have  
16 been SPSI.

17 Q. What would it have taken -- so  
18 strike that.

19 Prior to the vent and burn  
20 being executed, what would it have taken to  
21 convince you that there was no polymerization  
22 occurring in the VCM cars?

23 MR. BRAGA: Objection.

24 THE WITNESS: I don't know that  
25 you could have convinced me.

1 QUESTIONS BY MR. BYARS:

2 Q. And let's say for a moment that  
3 it had been determined that there was no  
4 polymerization occurring in the VCM cars.

5 What would you have done with  
6 the VCM cars?

7 MR. LEVINE: Objection.

8 THE WITNESS: Had there not  
9 been any polymerization going on, had  
10 the cars just been derailed, we would  
11 have transferred them.

12 QUESTIONS BY MR. BYARS:

13 Q. And by "transferred them," can  
14 you just explain for the jury what that  
15 means?

16 A. We would take the product out  
17 of one tank and put it in the other.

18 MR. BYARS: So, Mr. Day, I'm  
19 going to reserve the balance of my  
20 time. I don't have any further  
21 questions for you right now.

22 Thank you for your patience. I  
23 do appreciate it.

24 THE WITNESS: Yes, sir.

25 VIDEOGRAPHER: All right. The

1 time is 2:47 p.m. We're going off the  
2 record.

3 (Off the record at 2:47 p.m.)

4 VIDEOGRAPHER: The time is  
5 2:56 p.m., and we're back on the  
6 record.

7 DIRECT EXAMINATION

8 QUESTIONS BY MS. BROZ:

9 Q. Good afternoon, Mr. Day. My  
10 name is Alycia Broz, and I'm from the law  
11 firm of Vorys, Sater, Seymour and Pease, and  
12 I represent Oxy Vinyls in this litigation.

13 I believe we met earlier today.

14 A. I think so.

15 Q. Okay. Thank you for coming to  
16 talk to us today and to answer some questions  
17 for us.

18 Could you let us know what you  
19 did to prepare for today's deposition?

20 A. I flew from Boston to  
21 Washington, DC.

22 Q. Do you currently reside in  
23 Boston?

24 A. No, sir -- ma'am. Sorry.

25 Q. It's okay. All right.

1           A.       No, ma'am. I live in Fort  
2   Worth, Texas.

3           Q.       Okay. And did you meet with  
4   anyone prior to your deposition?

5           A.       With my attorneys and the  
6   Norfolk Southern attorney.

7           Q.       So you met with Mr. Braga.  
8                    Is that correct?

9           A.       That's correct.

10          Q.       And you also met with Norfolk  
11   Southern's attorneys?

12          A.       Correct.

13          Q.       Okay. And which Norfolk  
14   Southern attorneys did you meet with?

15          A.       Noah, who is the lead guy.  
16   Pretty much everybody on this side.

17          Q.       Everybody on the side of your  
18   table you met with.

19                   Did you meet with anybody else  
20   other than your counsel, which I assume  
21   Mr. Braga to be, and Norfolk Southern counsel  
22   in preparation for today's deposition?

23          A.       Mr. Braga is mine, along with  
24   Mr. Hutt and Mr. Wald.

25          Q.       And did you meet with anyone

1     else?

2             A.       My boss was with us.

3             Q.       Okay. And who is your boss?

4             A.       Bobby Breed.

5             Q.       And he participated in all the  
6 meetings you had in preparation for your  
7 deposition today?

8             A.       Yes, ma'am.

9             Q.       Did you discuss your testimony  
10 with Mr. Breed?

11            A.       He was in the room when we were  
12 talking about all things that we're talking  
13 about now.

14            Q.       Okay. Did you meet with anyone  
15 else?

16            A.       No, ma'am.

17            Q.       And how long did you meet with,  
18 you know, counsel for Norfolk Southern, your  
19 own counsel and Mr. Breed in preparation for  
20 your deposition?

21            A.       Several hours on Sunday and  
22 several hours yesterday.

23            Q.       Yesterday being Monday?

24            A.       Monday the 15th.

25            Q.       Okay. Did you do anything else

1 to prepare for your deposition today?

2 A. I read the dep -- the  
3 transcript from the NTSB hearing and the  
4 interview -- the NTSB interview.

5 Q. Your NTSB interview?

6 A. Excuse me?

7 Q. Your NTSB interview?

8 A. Yes, ma'am.

9 Q. And did you read the entire  
10 transcript from June 22, 2023, NTSB hearing?

11 A. My portion.

12 Q. So just the afternoon?

13 A. Just my portion, yes, ma'am.

14 Q. Are you paying for Mr. Braga to  
15 be your attorney?

16 A. Somebody is paying him.

17 Q. But it's not you?

18 A. Personally?

19 Q. Yes.

20 A. Not out of my checking account,  
21 no.

22 Q. Is SRS paying for Mr. Braga to  
23 be your attorney?

24 A. I think our parent company is.

25 Q. Your parent company is.



1 And who is your parent company?

2 A. SRS was acquired by NRC, that  
3 was acquired US Ecology, that was acquired by  
4 Republic Services.

5 Q. And you believe Republic  
6 Services is paying for Mr. Braga to be your  
7 counsel here today?

8 A. Yes, ma'am.

9 Q. Did you talk to anyone in  
10 preparation for your deposition today, other  
11 than the folks we've already mentioned?

12 A. No, ma'am.

13 I guess I must clarify. One  
14 moment.

15 I said I was going to say to DC  
16 for a deposition.

17 Q. And who did you say that to?

18 A. The folks I was working with up  
19 in Boston.

20 Q. Are those fellow coworkers?

21 A. They were coworkers and my  
22 customer.

23 Q. Did you talk to anyone else  
24 about your deposition or the fact that you  
25 would have to testify here today?

1 A. No, ma'am.

2 Q. And you also testified in East  
3 Palestine at a hearing before the NTSB on  
4 June 22, 2023.

5 Is that correct?

6 A. Yes, ma'am.

7 Q. And what did you do to prepare  
8 for that testimony?

9 A. I met with Mr. Braga, Mr. Hutt,  
10 and some folks with WilmerHale. I don't  
11 remember they were.

12 Q. So counsel for Norfolk Southern  
13 you also met with prior to your testimony in  
14 the NTSB hearing on June 22, 2023?

15 A. Yes, ma'am.

16 Q. Did you meet with anyone else  
17 prior to that hearing?

18 A. No, ma'am.

19 Q. Did you talk to anyone else  
20 prior to that hearing about your testimony?

21 A. Just the crew that I was  
22 working with in St. Croix.

23 Q. Who was the crew in St. Croix?

24 A. My crew that I was working with  
25 in St. Croix, I said I had to leave to go to

1 Miami for a meeting.

2 Q. Did you talk to anyone else?

3 A. The folks that I was working  
4 for, my customer.

5 Q. In preparation for your  
6 testimony at the East Palestine NTSB hearing  
7 on June 22, 2023, did you review any  
8 documents?

9 A. I don't remember.

10 Q. How about in preparation for  
11 your testimony here today? Did you review  
12 any documents?

13 A. I think I said it was my -- the  
14 NTSB interview, the NTSB hearing, my portion  
15 of it, and some other documents about the  
16 incident.

17 Q. Okay. Did you review the text  
18 messages that were produced?

19 A. Oh, yes, ma'am.

20 Q. Okay. Did you review any  
21 e-mails that were produced?

22 A. I don't remember seeing  
23 e-mails. I don't remember.

24 Q. Okay. Anything else that you  
25 recall reviewing in preparation for your

1 deposition here today?

2 A. Pictures.

3 Q. Which pictures?

4 A. The pictures that I had on my  
5 phone that were exhibit -- provided.

6 Q. And you're confident that all  
7 those pictures were provided to your counsel  
8 to produce today in this litigation?

9 A. Yes, ma'am. They had my phone.

10 Q. Anything else that you  
11 reviewed?

12 A. Not that I know of.

13 Q. Am I correct that you report to  
14 Bobby Breed?

15 A. That is correct.

16 Q. And who does Terry Rockwell  
17 report to?

18 A. I believe he reports to Bobby  
19 Breed as well.

20 Q. Are you, like, coworkers or  
21 does Terry Rockwell report to you?

22 A. No. It's a unique situation.  
23 I report to Bobby and Terry reports to Bobby,  
24 but we don't -- neither Terry nor I report to  
25 each other.

1 Q. Understood.

2 Was Mr. Breed on-scene at East  
3 Palestine --

4 A. No, ma'am.

5 Q. -- after the derailment?

6 A. No, ma'am.

7 Q. But Mr. Rockwell was on-scene  
8 after the derailment?

9 A. Yes, ma'am.

10 Q. Did he arrive at the same time  
11 in East Palestine as you did?

12 A. We were in the same vehicle,  
13 yes, ma'am.

14 Q. So that would have been the  
15 morning of Sunday, February 5, 2023?

16 A. Yes, ma'am.

17 Q. Around 6 a.m.?

18 A. Yes, ma'am.

19 Q. Okay. Who else was in that  
20 vehicle with you?

21 A. Kent Farquhar.

22 Q. Anyone else?

23 A. No, ma'am.

24 Q. Does Kent Farquhar report to  
25 you?

1 A. No, ma'am.

2 Q. Who does he report to?

3 A. Terry Rockwell.

4 Q. What is Mr. Rockwell's title?

5 A. I really do not know. We  
6 changed positions a lot.

7 Q. Okay. But he's also an  
8 employee of SRS?

9 A. Yes, ma'am.

10 Q. All right. Prior to the  
11 derailment on February 3, 2023, were you  
12 familiar with Oxy Vinyls or Occidental  
13 Chemical or OxyChem?

14 A. Very much.

15 Q. Okay. And can you explain to  
16 me how you're familiar with -- well, can we  
17 just call them Oxy Vinyls for short?

18 A. Or Oxy, yeah.

19 Q. Sure.

20 A. I worked with Oxy since the --  
21 I would say since the very early '90s, maybe  
22 late '80s.

23 Q. And what do you mean by "worked  
24 with"?

25 A. We were an emergency response

1 contractor, and Oxy hired -- would hire us to  
2 perform emergency response operations.

3 Q. Does SRS have a contract with  
4 Oxy?

5 A. That's a contract department  
6 question.

7 Q. But you did respond -- you were  
8 an emergency response contractor for them?

9 A. Yes, ma'am.

10 Q. Were there any particular  
11 people at Oxy that you knew?

12 A. Oh, there's a lot of people I  
13 know.

14 Q. Okay. Who would you -- who do  
15 you know at Oxy?

16 A. Diane Larson. Butch Polasek.  
17 Last name is Wood -- I don't remember Woods.  
18 John Makazlik {phonetic}. I'm terrible with  
19 names.

20 There's a lot of people from  
21 the corporate office and from the Houston  
22 chemical complexes in general.

23 Q. And do you have any of those  
24 individuals' telephone numbers saved to your  
25 contact list on your cell phone?

1           A.       Yes, ma'am.

2           Q.       And how did you become familiar  
3 with people like Diane or, let's see --

4           A.       Butch Polasek?

5           Q.       -- Butch or John?

6           A.       John was the head of the  
7 emergency response group in the early '90s,  
8 early, mid-'90s.

9                   Butch Polasek and Diane Larson,  
10 they work together at the corporate office,  
11 or the tower in Dallas, and they were the  
12 lead of emergency services, something along  
13 those lines.

14          Q.       Before they arrived on the  
15 scene on February 5th, were you familiar with  
16 Alex Torres, Steve Smith or Justin Cox?

17          A.       I know Justin Cox from the  
18 emergency response group and a CHLOREP  
19 response team member.

20                   Steve Smith, we've met at  
21 something having to do with CHLOREP or at  
22 incidents.

23          Q.       And do you have Justin Cox's  
24 contact information saved on your cell phone?

25          A.       It's possible.



1 Q. How about Mr. Smith's?

2 A. It's possible.

3 Q. At any time after -- and I  
4 assume you didn't know who Alex Torres was?

5 A. No, ma'am.

6 Q. Okay. Have you met -- and you  
7 had not met him before February 3, 2023?

8 A. Not that I can recall.

9 Q. At any time between February 3,  
10 2023, and the date of the vent and burn,  
11 February 6, 2023, did you attempt to call or  
12 text either Mr. Smith or Mr. Cox while they  
13 were on the scene?

14 A. You've got my text logs. I  
15 don't remember.

16 Q. So if they're not on any  
17 texts -- if there are no texts on those logs  
18 to either Mr. Smith or Mr. Cox, they didn't  
19 happen?

20 A. That would be my assumption.

21 Q. So we don't have your call  
22 logs. We have your text logs, but we don't  
23 have your calls logs.

24 Did you try to call Mr. Cox or  
25 Mr. Smith between February 3rd and

1 February 6, 2023?

2 A. I don't remember.

3 Q. And did you try to call any of  
4 the other Oxy employees that you're familiar  
5 with between February 3rd and February 6,  
6 2023, including Diane, Butch or John?

7 A. All those people have retired.  
8 No.

9 Q. You didn't try to text them  
10 either?

11 A. No, ma'am.

12 Q. And I understand Mr. Gold was  
13 also retired, who you reached out via text?

14 A. Correct.

15 Q. And it was okay to text him  
16 even though he had retired?

17 A. Correct.

18 Q. Is there a reason why you  
19 didn't reach out to Diane or John or Butch or  
20 John after the derailment on February 3,  
21 2023?

22 A. I can't think of a reason why I  
23 did -- I would have and wouldn't have.

24 Q. What does that mean?

25 A. They worked for Oxy. They've

1     retired, or at least two of them retired.  
2     They weren't chemical handlers or emergency  
3     response. They managed the groups. They  
4     were corporate office folks.

5             Q.       But if had you known an  
6     emergency response person from Oxy, you would  
7     have called them?

8             A.       It's possible.

9             MR. LEVINE: Objection.

10    QUESTIONS BY MS. BROZ:

11            Q.       But you're not willing to call  
12    somebody who would be from a corporate office  
13    form Oxy to get their opinion about the  
14    derailment on February 3, 2023.

15                    Correct?

16                    MR. LEVINE: Objection.

17                    MR. BRAGA: Objection.

18                    THE WITNESS: We already had  
19    several people. The EOC was stood up,  
20    and there were several people in the  
21    corporate office on -- in  
22    communication with the site. I was  
23    listening to conference calls.

24    QUESTIONS BY MS. BROZ:

25            Q.       Let me make sure I understand

1 what you're saying.

2 They were already people that  
3 you were talking to from corporate office of  
4 Oxy while on the derailment site in East  
5 Palestine?

6 A. Because they stood up the  
7 emergency operations center, and everybody  
8 was in that room.

9 Q. Okay. What do you mean by  
10 "stood up the emergency operations center"?

11 A. They opened it up. They  
12 basically had people come in and manned,  
13 stationed, the emergency operations center at  
14 the corporate office.

15 Q. In Dallas?

16 A. Yes, ma'am.

17 Q. And that's who you're having  
18 conversations with?

19 A. That was where the conference  
20 call -- that's -- I understood that's where  
21 the conference call was initiated from.

22 Q. So let's talk about when you  
23 first arrived at East Palestine on  
24 February 5, 2023, around 6 a.m.

25 Where did you go first?

1           A.       We drove by the Leake Oil  
2 site -- side of the site and went to the  
3 command center.

4           Q.       Did you say legal, l-e-g-a-l?

5           A.       Leake, L-e-a-k-e. Leake Oil  
6 site.

7           Q.       Okay. That's a lawyer talking  
8 to somebody who doesn't do emergency  
9 response.

10                   And who did you meet up with?

11           A.       Where?

12           Q.       On the Leake Oil side of this  
13 derailment.

14           A.       We drove past the Leake Oil  
15 side of the response.

16           Q.       Okay. And where did you go?

17           A.       To the command center.

18           Q.       And where was the command  
19 center at that time?

20           A.       In town.

21           Q.       Was it at the fire station, the  
22 school, a trailer? Where was it?

23           A.       There -- I didn't know how it  
24 was all set up.

25           Q.       Uh-huh.

1           A.       There's a fire station, there's  
2 another fire station across the parking lot,  
3 so I'm not sure what they called it. It's a  
4 building that everybody was at.

5           Q.       Okay. But you didn't go to the  
6 trailer?

7           A.       To a trailer?

8           Q.       Yes.

9           A.       No.

10          Q.       The command center, was that  
11 also where incident command was or was that  
12 someplace different?

13          A.       That is where the incident  
14 commander, I believe, was.

15          Q.       And you believe it was in a  
16 fire station.

17                   Is that right? You believe it  
18 was in a fire station?

19          A.       It was at a building. I can't  
20 tell you. They had two buildings. One  
21 looked like a fire station. The other looked  
22 like another building that looked kind of  
23 like maybe an old fire station. Who knows.

24          Q.       Okay. Somewhere in town in a  
25 building that might have been the fire

1 station?

2 A. That's absolutely correct.

3 Q. Okay. Great.

4 And what did you do when you  
5 arrived?

6 A. Walked inside. Saw that there  
7 was a lot of commotion going on. Sought out  
8 some NS folks. I met Mr. Williams, may have  
9 been Mr. Schoendorfer and Mr. -- Scott  
10 Deutsch.

11 There were several NS folks in  
12 the -- in that room that they are --

13 Q. I'm sorry. I didn't mean to  
14 cut you off.

15 A. Bay. In the bay.

16 Q. In the fire station bay?

17 A. Yes, ma'am.

18 Q. Okay. And how soon after you  
19 arrived did you participate in the conference  
20 call with the Oxy folks in Dallas?

21 A. It would have been sometime  
22 after that. Before we did the drone  
23 overflight.

24 Q. Where did the conference call  
25 on your end happen with the Oxy corporate

1 folks in Dallas?

2 A. In a Suburban outside of the  
3 SPSI trailer east of the Leake Oil side of  
4 the derailment.

5 Q. And when you're saying  
6 "Suburban," you mean a car?

7 A. Suburban. Truck. SUV.

8 Q. An SUV. Okay. Just want to  
9 make sure we're talking about the same thing.  
10 How many people were in the  
11 Suburban with you?

12 A. I believe there were a total of  
13 four.

14 Q. Who was there?

15 A. I'm going to guess it was  
16 myself, Mr. Rockwell, Mr. McCarty and  
17 possibly Mr. Farquhar, but I don't know that  
18 for a fact.

19 Q. So nobody from NS?

20 A. No. Yeah. That may have been  
21 the fourth person. I don't know who the  
22 fourth person was.

23 Q. Was anybody else on that call  
24 who was at the derailment site other than the  
25 four of you?



1 A. Not that I know of.

2 Q. Do you know who was on the call  
3 from Oxy in Dallas?

4 A. Oxy people.

5 Q. Do you have any names?

6 A. No.

7 Q. Did anyone identify themselves  
8 during the call?

9 A. Several people identified  
10 themselves, but I don't remember who they  
11 were.

12 Q. You don't remember any of the  
13 names?

14 A. No, ma'am.

15 Q. Do you remember how many people  
16 spoke on the call?

17 A. I didn't pay that much  
18 attention to that part of it, no.

19 Q. Did more than one person speak  
20 on the call for Oxy?

21 A. I'm going to guess yes.

22 Q. And who spoke as between -- or  
23 among you, Mr. Rockwell, Mr. McCarty and  
24 Mr. Farquhar?

25 A. We basically listened, if my

1 memory serves me correct.

2 Q. Did you guys say anything at  
3 all on the call?

4 A. Not on the call, no.

5 Q. Did Mr. McCarty or Mr. Rockwell  
6 say anything on the call?

7 A. That would be a question for  
8 them. I don't recall.

9 Q. You don't remember them saying  
10 anything?

11 A. I don't recall, no, ma'am.

12 Q. And what did Oxy Dallas say to  
13 you on that call?

14 A. We talked about the incident.  
15 Obviously we were on a call, so somebody in  
16 that Suburban probably said something. I  
17 don't remember what or who.

18 The only takeaway from that was  
19 a -- someone that I don't know, that Terry  
20 knows -- Terry Rockwell knows very well, said  
21 he didn't believe polymerization could occur.  
22 Or -- yes, could occur.

23 And at the end of that  
24 conversation, at the end of it completely,  
25 nobody challenged this person. When he was

1 either put on mute or hung up, the four of us  
2 that were in the truck looked at each other,  
3 like, I can't believe he actually said that.  
4 Because based on our training, that's  
5 potentially what was going on.

6 Q. Okay. When the Oxy  
7 representative said that he didn't believe  
8 polymerization could occur or was occurring,  
9 did you ask him why he believed that or said  
10 that?

11 A. No, ma'am.

12 Q. Did you ask him any questions  
13 about how he drew those conclusions?

14 A. Ma'am, I just said that I did  
15 not make any -- I was not talking in that  
16 truck. I was listening.

17 Q. Okay. Did anybody else in that  
18 truck ask the Oxy representative any  
19 questions about the statement he made about  
20 the possibility of the poly -- of the VCM  
21 polymerizing?

22 A. Not until after the call had  
23 ended.

24 Q. So let me make sure I have this  
25 absolutely clear.

1                   You didn't ask anyone from Oxy  
2   to explain the basis for their conclusion?

3           A.       I did not.

4           Q.       And no one else in the truck  
5   asked anybody from Oxy to explain the basis  
6   for their conclusion?

7           A.       Yes, ma'am.

8           Q.       Okay. And after you hung up,  
9   the four of you were talking then?

10          A.       Yes, ma'am.

11          Q.       Okay. And what did you -- the  
12   four of you say?

13          A.       Did they really just say that?  
14                   And we were trying to wrap our  
15   heads around our training and what he just  
16   said.

17          Q.       Did you think it might be a  
18   good idea at that point in time to call them  
19   back to ask any questions that you had since  
20   you all drew the same conclusion that you  
21   were surprised with what they said on the  
22   call?

23          A.       The unfortunate --

24                   MR. BRAGA: Objection.

25                   THE WITNESS: The unfortunate

1 part is, we're contractors. When  
2 somebody says something like that, if  
3 he was wrong, we're going to call them  
4 out in front of superiors and  
5 underlings. Not really good for a  
6 contractor to do.

7 So there's a lot of  
8 communications that probably took  
9 place, that did take place afterwards,  
10 going, you got to show some respect.

11 The incident was, at the point,  
12 pretty -- getting pretty critical.

13 QUESTIONS BY MS. BROZ:

14 Q. Uh-huh.

15 A. We could not, at the time, take  
16 all his information at face value. We needed  
17 to check other sources, which is the exact  
18 reason I called Bob Gold, the exact reason we  
19 talked amongst ourselves.

20 When the OxyChem folks showed  
21 up, one of the first things Mr. Cox said was,  
22 I guess I'm going to have to go to Dallas and  
23 explain what the P on the DOT guidebook  
24 means.

25 Q. Okay. We'll get to that. I

1 want to know about the conversation you had  
2 in the car after you hung up with Oxy.

3 A. We've got to find -- we've got  
4 to get additional information.

5 Q. Did you tell Norfolk Southern  
6 or any representatives of Norfolk Southern  
7 what Oxy said on that telephone call that you  
8 had in the Suburban?

9 A. I believe we did.

10 Q. Who did you tell?

11 A. Either Scott Deutsch, Scott  
12 Gould, Robert Wood, and possibly -- or  
13 David -- Dave Schoendorfer. I know we said  
14 it.

15 Q. Are you certain you said it to  
16 one of them?

17 A. I'm positive.

18 Q. And it was you personally who  
19 said it to one of them?

20 A. Multiple people said it to  
21 them.

22 Q. But I'm asking about you, Chip  
23 Day.

24 Did you say that to any of  
25 them?

1           A.       I believe I did.

2           Q.       Do you know for certain whether  
3   you did?

4           A.       No, ma'am.

5           Q.       Do you recall Norfolk Southern  
6   reacting to the conversation that you had  
7   with Oxy Vinyls on the morning of  
8   February 5th?

9           A.       No, ma'am.

10          Q.       Do you recall them saying  
11   anything about Oxy Vinyls' conclusion that  
12   polymerization was not happening?

13          A.       No, ma'am.

14          Q.       So your next step was to take  
15   it upon yourself to do some independent  
16   research to figure out if Oxy Vinyls'  
17   statements were true?

18                   MR. BRAGA:  Objection.

19                   THE WITNESS:  Yes, ma'am.

20   QUESTIONS BY MS. BROZ:

21          Q.       And I believe earlier today we  
22   talked about who you reached out to to have  
23   those conversations with, so I don't want to  
24   retread that ground, but I do want to mark a  
25   document as an exhibit.

1 MS. BROZ: Did you say we're on  
2 14?

3 VIDEOGRAPHER: 14.

4 (Day Exhibit 14 marked for  
5 identification.)

6 QUESTIONS BY MS. BROZ:

7 Q. Mr. Day, I'm handing you what  
8 we've marked as Deposition Exhibit 14, and I  
9 will represent to you that I printed this off  
10 on January 4, 2024. And the HTTP website is  
11 on the bottom left-hand corner of the  
12 document.

13 Let me know when you have time  
14 to look through that.

15 A. Okay.

16 Q. If you would turn -- the  
17 Internet labeled these for me, so if you  
18 would turn to page 4 of 9 and 5 of 9.

19 A. Yes, ma'am.

20 Q. And it says this is Bob Gold,  
21 sales associate with Feels Like Home Realty.

22 Is that correct?

23 A. Yes, ma'am.

24 Q. Okay. Is that the Mr. Gold  
25 that you reached out to after the derailment



1 to ask his opinion about the possibility that  
2 the vinyl chloride was polymerizing?

3 A. That's the guy.

4 Q. Set that aside.

5 MR. BRAGA: All done with that?

6 MS. BROZ: Yep. Just wanted to  
7 make sure we had the right person.

8 QUESTIONS BY MS. BROZ:

9 Q. And what was the next  
10 conversation you had with anyone from Oxy  
11 Vinyls after that morning call in the  
12 Suburban?

13 A. I don't remember when they --  
14 when Oxy showed up.

15 Q. Okay. So was it that same day?

16 A. I believe so.

17 Q. So on February 5th, somebody  
18 from Oxy showed up, and you had an in-person  
19 conversation with those individuals?

20 A. Three somebodies.

21 Q. Three somebodies.

22 And I think we've already  
23 established that one of those somebodies was  
24 Justin Cox. The other one was Steve Smith?

25 A. Yes, ma'am, and one other guy.

1 Q. And then one other guy.

2 I'll just -- for the record,  
3 we'll say it's Alex Torres.

4 A. There you go.

5 Q. Okay. And where did you meet  
6 with Mr. Torres, Smith and Cox?

7 A. At the SPSI trailer. I believe  
8 that's where it was. Either there or at the  
9 command center.

10 Q. And do you know if it was in  
11 the morning or the afternoon of the 5th?

12 A. I don't remember. The time was  
13 going by very, very fast, so I don't know.

14 Q. So, soon after they arrived?

15 A. On-site, I'm going to guess,  
16 yes, ma'am.

17 Q. Who else was in the trailer  
18 with you?

19 A. Folks from SPSI, SRS, maybe the  
20 NS.

21 Q. Do you remember any names of  
22 individuals who were there?

23 A. No, ma'am.

24 Q. You just know it was somebody  
25 from SPSI, somebody from SRS and somebody

1 from NS?

2 A. Most likely NS, yes, ma'am.

3 Q. Mr. McCarty there?

4 A. Possibly.

5 Q. Who else from SRS was there?

6 A. Could have been Terry Rockwell  
7 or Kent Farquhar or both of them.

8 Q. But you have no specific  
9 recollection as to who was in the trailer at  
10 the time?

11 A. No, ma'am.

12 Q. And who from NS was there?

13 A. Either Mr. Gould, Mr. Deutsch.  
14 Most likely one of those two guys.

15 Q. But you don't have any specific  
16 recollection of either of them being there?

17 A. No, ma'am.

18 Q. Okay. Can you tell me how the  
19 conversation started between you and the  
20 individuals on the ground from Oxy Vinyls?

21 A. Well, most likely we probably  
22 hugged each other because we are friends.

23 Q. Uh-huh.

24 A. Hey, what's going on. What's  
25 happening here, and we described what we've

1     seen on the site.

2             Q.       And who did most of the talking  
3     for Oxy Vinyls?

4             A.       I don't know.

5             Q.       You don't know.

6                     Do you remember any comments or  
7     statements that Oxy Vinyls made in the  
8     trailer on February 5, 2023?

9             A.       There were comments made --  
10    there were discussions made in the trailer,  
11    outside of the trailer, in driving from  
12    point A to point B, walking around the site,  
13    going back to the trailer.  There's -- there  
14    was a lot of discussion with a lot of  
15    different people.

16            Q.       Do you have any notes of any of  
17    those conversations?

18            A.       No, ma'am.

19            Q.       Did you take any notes at all  
20    between February 3rd and February 6, 2023?

21            A.       I did.

22            Q.       Okay.  Where are your notes?

23            A.       Produced.

24            Q.       Produced.

25                     How many notes did you take?

1 A. Very few.

2 Q. And what did you take them on?

3 A. A notepad.

4 Q. A regular old 8-and-a-half-by-  
5 11-inch notepad?

6 A. No, ma'am.

7 Q. What was it? What did it look  
8 like?

9 A. A notebook like you slide in  
10 your back pocket. It's got a picture -- you  
11 guys have a copy of it, of all the pages and  
12 the front and the back.

13 Q. You handed those over to your  
14 counsel?

15 A. I did.

16 MR. BRAGA: They've been  
17 produced.

18 QUESTIONS BY MS. BROZ:

19 Q. Okay. So you had a  
20 conversation.

21 What I want to focus on is the  
22 conversation that you had with Steve Smith  
23 and Justin Cox -- we'll put Alex to the  
24 side -- in the trailer when they first  
25 arrived on February 5, 2023.

1 Do you remember statements that  
2 they made during that conversation?

3 A. I can make this real easy. No.

4 Q. Do you remember any statements  
5 that you made during that conversation?

6 A. We talked about what we were  
7 seeing and what had occurred, the reason that  
8 we got pulled into the incident.

9 Q. During that conversation, do  
10 you remember anything that anyone else said  
11 from SPSI or SRS or Norfolk Southern during  
12 that conversation?

13 A. We were basically discussing  
14 what we have been seeing since the beginning.

15 Obviously the NS and SPSI were  
16 able to provide, very soon after the  
17 derailment, information up to the point that  
18 SRS got on-scene and what the conditions --  
19 the current conditions were.

20 Q. Did you discuss polymerization  
21 during that conversation?

22 A. I don't remember.

23 Q. Were there any -- was there any  
24 information that the individuals from Oxy  
25 Vinyls were supposed to gather and return to

1     you?

2             A.       That would be a question for  
3     the Oxy Vinyls folks.

4             Q.       No, I'm asking you if you asked  
5     them for any information that they were  
6     supposed to gather and return back to you.

7                     It's a bad question. Let me  
8     restate it.

9                     Did you ask Oxy Vinyls for any  
10    information, or did you ask them any  
11    questions that they couldn't answer and they  
12    said they would get back to you?

13                    MR. BRAGA: Objection.

14                    THE WITNESS: There was  
15                    obviously a discussion, and we've  
16                    already touched on it, about the  
17                    polymerization potential and the  
18                    comment that the gentleman made on the  
19                    conference call. And I believe --

20    QUESTIONS BY MS. BROZ:

21             Q.       You talked --

22             A.       -- that's sometime in the  
23    trailer, outside of the trailer, in the  
24    Suburban, outside of the Suburban, when  
25    Mr. Cox said, I guess I need to go to Dallas,

1 that we've already discussed.

2 Q. And that was the only comment  
3 you remember from that conversation?

4 A. That's a pretty pointed  
5 conversation.

6 Q. I understand that.

7 But is that the only comment  
8 you remember from that conversation from  
9 somebody from Oxy Vinyls?

10 A. From that one, yes.

11 Q. Okay. How long did that  
12 meeting in the trailer or outside the trailer  
13 last?

14 A. I'd say probably maybe  
15 30 minutes, 45 minutes-ish.

16 Q. And then where did the  
17 individuals from Oxy Vinyls go?

18 A. I do not know.

19 Q. Okay. When was the next time  
20 that you met with either Mr. Smith or  
21 Mr. Cox?

22 A. I'm thinking it may have been  
23 when we did the drone -- or not the drone  
24 flight, but the next time -- it would have  
25 been on the Leake Oil side. They were



1 getting -- trying to get the lay of the land  
2 and getting as close as they can. They've  
3 got, you know, particular requirements.

4 They're not allowed to go different places.

5 So I think they were with us in  
6 the exclusion -- or at the edge of the  
7 exclusion zone looking at the derailment.

8 Q. Do you remember any  
9 conversations that you had during that  
10 meeting?

11 A. We talked about the -- I  
12 remember we talked outside about -- so I'm  
13 thinking it's possibly at Leake Oil -- about  
14 potential for polymerization, what we were  
15 thinking. And that's when Mr. Smith said  
16 emphatically, several times, that he's not a  
17 polymerization expert, and he doesn't know.

18 Q. Did Mr. Smith, during that  
19 conversation, also tell you that he would go  
20 and ask Dallas about it and let you know what  
21 the folks at Dallas said about the  
22 possibility of polymerization?

23 A. I don't remember.

24 Q. Did he -- Mr. Smith ever come  
25 back to you between February 3rd and

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1 February 6, 2023, and tell you, I've spoken  
2 to our folks in Dallas, and they don't  
3 believe that polymerization is happening?

4 A. Yes, ma'am.

5 Q. Okay. And when did he tell you  
6 that?

7 A. Sometime after that.

8 Q. Okay. And then after Mr. Smith  
9 told you that, how did you respond?

10 A. In -- I was -- I was -- I was  
11 surprised. I know that Oxy has a lot of  
12 really, really, really good people, both at  
13 the EOC and at their beck and call, to give  
14 input on incidents involving vinyl chloride.

15 As the -- one of the other  
16 lawyers pointed out, experts. Don't like the  
17 word "expert." They're experts in the  
18 operation of a chemical plant. They're  
19 experts in the product. They're  
20 professionals in all of these rights.

21 But when they -- when we ask  
22 questions -- when we provide data -- or  
23 information. Forget the data. When we  
24 provide information of what we're seeing at  
25 the site, we're kind of the experts of

1     derailments and cars on fire and incidents  
2     that are potentially occurring.

3                     So it's really difficult for a  
4     chemist, sitting in a pristine condition,  
5     dealing with moles and grams and liters of  
6     materials, to look at a derailment where we  
7     have thousands of gallons of this material  
8     and different things being -- affecting the  
9     product.

10                    I know I'm going off, but you  
11     got -- the OxyChem were providing  
12     information. I don't believe they were  
13     accepting the information we were feeding  
14     back to them on why we believed that  
15     polymerization was occurring.

16                    Q.     Okay. And what information do  
17     you believe that they weren't accepting?

18                    A.     They were saying that  
19     polymerization could not occur --

20                    Q.     Okay. And what --

21                    A.     -- when other folks --

22                    Q.     I apologize, go ahead.

23                    A.     -- when other folks, other  
24     industry professionals, retired or current,  
25     were saying it's possible.

1 Q. And what information do you  
2 think that they weren't hearing that you were  
3 providing to them about what you were seeing  
4 on the scene, resulting in your conclusion  
5 that polymerization was occurring?

6 A. That the PRDs were operating as  
7 designed for extended periods of time. They  
8 stop. Several hours later, one goes off for  
9 70 minutes.

10 Q. And if they had heard that, you  
11 believe they would have drawn the same  
12 conclusion that you did?

13 A. It's possible.

14 Q. But they didn't?

15 A. No, ma'am, because they keep  
16 saying that polymerization is not occurring.

17 Q. Okay. Okay. We are at the  
18 Leake Oil side, and you're talking to Steve  
19 Smith and Alex Torres.

20 When was the next conversation  
21 you had with --

22 A. I don't know that Alex was  
23 there.

24 Q. Okay. I'm sorry, I misspoke.  
25 Let me try that again.

1                   You're on Leake Oil side, and  
2   you're talking to Steve Smith and Justin Cox.  
3   I misspoke.

4                   When was the next conversation  
5   you had with either of them?

6           A.       There were conversations kind  
7   of all -- all the -- a lot, moving around the  
8   site. I can't give you exact times. I can't  
9   give you exact locations.

10                  There were conversations when  
11   we would gather up, we would be walking by,  
12   excuse me, bumping into each other at the  
13   high school, at the command center.

14           Q.       And were Mr. Smith and Mr. Cox  
15   always together when you were speaking with  
16   them?

17           A.       If I remember right, they only  
18   had one vehicle, so they either left somebody  
19   or they were all together.

20           Q.       Do you remember any specifics  
21   of any of those additional conversations you  
22   had with Mr. Smith or Mr. Cox?

23           A.       No, ma'am.

24           Q.       And you mentioned being at the  
25   high school.

1                   At some point in time did --  
2   not incident command, but did all the  
3   individuals who were on the scene gather at  
4   the high school?

5           A.       After the Ohio IMT team was  
6   stood up, the incident management team, I  
7   think command actually moved to the high  
8   school.

9           Q.       And did you have a room in the  
10   high school?

11          A.       Everybody had a room in the  
12   high school.

13          Q.       All right. Which room was  
14   yours?

15          A.       The lunchroom.

16          Q.       Smart.

17                   Do you remember where Oxy was  
18   set up in the high school?

19          A.       No, ma'am.

20          Q.       Do you remember meeting with  
21   anyone from Oxy inside the high school after  
22   command was moved over there?

23          A.       I do not recall.

24          Q.       Do you remember having any  
25   further conversations, other than the ones

1 we've discussed, with anyone from Oxy about  
2 the possibility of the vinyl chloride cars  
3 polymerizing?

4 A. Like I said a little while ago,  
5 there were a lot of conversations. I can't  
6 tell you it was on Thursday at two o'clock in  
7 the afternoon at the intersection of X and Y.

8 There were conversations going  
9 on. I was having them. Terry Rockwell was  
10 having them. Drew McCarty may have been  
11 having them. The incident commander may have  
12 had them. NS may have had them.

13 Q. Sure. I was talking about  
14 conversations that you personally had. I'm  
15 not asking you to testify for anyone else.

16 So are there other  
17 conversations that you recall, other than the  
18 ones we've discussed, between February 3rd  
19 and February 6th between you and anyone from  
20 Oxy?

21 A. I thought we established that.

22 Q. What have we established?

23 A. That there were conversations  
24 taking place. I can't tell you it was at the  
25 intersection of X and Y on Tuesday afternoon.

1           Q.       I don't want the intersection  
2   of X and Y on Tuesday afternoon. I just  
3   remem -- and I don't want you to tell me the  
4   date or the time, but I just want you to  
5   testify -- tell me if there are any other  
6   conversations that you recall having.

7           A.       There were conversations. I  
8   can't tell you where or what was -- what was  
9   the subject of the discussion.

10          Q.       Okay. There you go. That's  
11   what I was getting at. I apologize for my  
12   poor question.

13                 Do you remember ever speaking  
14   to anyone from Oxy Dallas, other than the  
15   conversation we've discussed?

16          A.       No, ma'am.

17          Q.       So you had one call with  
18   individuals from Oxy Dallas between  
19   February 3rd and February 6, 2023?

20          A.       The conference call, yes,  
21   ma'am.

22          Q.       Did you listen in on any other  
23   calls between anyone else and individuals  
24   from Oxy Vinyls Dallas between February 3rd  
25   and February 6, 2023?



1 A. I do not recall.

2 Q. Okay.

3 A. Let's take a break.

4 MS. BROZ: Want a break? Okay.

5 VIDEOGRAPHER: The time is  
6 3:37 p.m., and we're going off the  
7 record.

8 (Off the record at 3:37 p.m.)

9 VIDEOGRAPHER: The time is  
10 3:46 p.m. We're back on the record.

11 QUESTIONS BY MS. BROZ:

12 Q. Mr. Day, before we took a  
13 break, we were talking about your  
14 conversations that you had with Oxy Vinyls'  
15 representatives while at East Palestine. And  
16 I believe we talked about all the  
17 conversations you had with anybody from Oxy  
18 Vinyls who was on the ground at East  
19 Palestine.

20 Is that correct?

21 A. I believe so.

22 Q. And we talked about all the  
23 conversations that you had with anyone from  
24 Oxy in Dallas between February 3rd and  
25 February 6, 2023.

1 Is that correct?

2 A. Yes, ma'am.

3 Q. Okay. Just a quick -- when you  
4 get to go second or third, you get to do a  
5 little cleanup and jump around a little bit,  
6 so I apologize for that.

7 Who paid SRS's invoices for the  
8 work they did at East Palestine?

9 MR. BRAGA: You can answer that  
10 question if you know.

11 THE WITNESS: SPSI -- SPSI.

12 QUESTIONS BY MS. BROZ:

13 Q. SPSI paid your invoices?

14 And that was because you were  
15 subcontracting for them?

16 A. I believe so, yes, ma'am.

17 Q. And since the derailment in  
18 East Palestine, do you have a new contract  
19 between Norfolk Southern and Republic?

20 A. I do not know.

21 Q. Do not know as Chip Day, or do  
22 you also not know as the 30(b)(6)  
23 representative for SRS?

24 And if you --

25 MR. BRAGA: Wait till tomorrow

1 for that one.

2 QUESTIONS BY MS. BROZ:

3 Q. Well, I just want to know,  
4 because I want to know if I should ask it for  
5 you tomorrow.

6 A. I don't know.

7 Q. You don't know. Okay.

8 MR. BRAGA: I don't know  
9 either.

10 THE WITNESS: I may know  
11 tomorrow.

12 (Day Exhibit 15 marked for  
13 identification.)

14 QUESTIONS BY MS. BROZ:

15 Q. Okay. Mr. Day, I've handed you  
16 what we've marked as Deposition Exhibit 15.

17 Do you recognize this document?

18 A. It says, "Interview Transcript,  
19 Charles Day, Senior Project Manager,  
20 Specialized Response Solutions, March 1,  
21 2023."

22 Yes, ma'am, I recognize it.

23 Q. And that is what this document  
24 is?

25 A. You handed it to me. I'm

1     guessing it is.

2             Q.        Okay.  If you want to look  
3     through it to confirm that that's what it is,  
4     you're more than welcome to do that.

5             A.        Okay.  Yes, ma'am.

6             Q.        This occurred March 1, 2023, so  
7     less than a month after the derailment?

8             A.        Yes, ma'am.

9             Q.        And you answered questions that  
10    were put to you by NTSB and its  
11    representatives.

12                    Is that correct?

13            A.        Yes, ma'am.

14            Q.        And you attempted to answer  
15    these questions truthfully?

16            A.        Yes, ma'am.

17            Q.        And after the question -- and  
18    you were able to answer the questions fully  
19    and completely.  You weren't cut off or  
20    anybody stopped you from testifying?

21            A.        Correct.

22            Q.        And did anybody prepare you for  
23    this interview that happened on March 1,  
24    2023?

25            A.        No, ma'am.

1 Q. And after the interview was  
2 completed, you had an opportunity to review  
3 the transcript.

4 Is that right?

5 A. Yes, ma'am.

6 Q. And if you turn to the very  
7 last page, which is marked NS-CA-4195, do you  
8 see that?

9 A. Yes, ma'am.

10 Q. And that's your signature on  
11 the transcript?

12 A. That is.

13 Q. And it's dated April 20, 2023?

14 A. It's March 20, 2023. April,  
15 yes. March. Or April. I'm sorry.

16 Q. That's okay.

17 And you were able to make any  
18 corrections that you wanted to on the  
19 transcript on that same piece of paper?

20 A. It was my understanding if I  
21 found things spelled wrong, that was what I  
22 was allowed to correct.

23 Q. And just things that were  
24 spelled wrong?

25 A. Correct.

1 Q. Okay. And is everything -- you  
2 testified to me earlier today that you  
3 reviewed this in preparation for your  
4 deposition.

5 Is that right?

6 A. Yes, ma'am.

7 Q. Is there anything upon your  
8 review that you believe is inaccurate or  
9 incorrect that is contained in this  
10 transcript?

11 A. I don't believe so.

12 Q. Okay.

13 A. But I'll bet you'll show me  
14 something.

15 Q. You've been around lawyers too  
16 long. You have no trust in us.

17 Turn your page. Could you turn  
18 to page 13 of the transcript?

19 A. Yes, ma'am.

20 Q. Okay. And you see the last  
21 paragraph that starts on line 21?

22 A. Yes, ma'am.

23 Q. And it says, "I guess if you  
24 want to call us a technical group, myself,  
25 Drew McCarty, Robert Wood and several others

1     agreed to then burn what was going to be the  
2     chosen method for taking care of these VCM  
3     cars."

4                     I don't want to ask you about  
5     the chosen method for taking care of the VCM  
6     cars, but I do want to ask you about the  
7     technical group.

8                     Who else were the others in the  
9     technical group, the other folks mentioned in  
10    there?

11            A.       So the technical group was  
12    basically made up of myself, Mr. Rockwell,  
13    Mr. McCarty, a few other folks from SPSI,  
14    representatives of the NS.

15                    OxyChem -- Oxy Vinyls was --  
16    was part of our group. They would come to  
17    these meetings when we discussed things. I  
18    don't know exactly what this exact time was,  
19    whether they were there or somewhere else.

20                    So it was pretty much everybody  
21    that was on-scene and assigned to the  
22    compressed gas cars.

23            Q.       Okay. Did Oxy Vinyls just come  
24    to the meetings of the technical group, or is  
25    it your testimony that they were members of

1 the technical group?

2 A. They attended the meetings.

3 Q. Did Oxy Vinyls attend any  
4 meetings in which the technical group decided  
5 to vent and burn the five vinyl chloride  
6 railcars?

7 A. I believe they did.

8 MR. BRAGA: Object to the form  
9 of the question.

10 THE WITNESS: I believe they  
11 did.

12 QUESTIONS BY MS. BROZ:

13 Q. Okay. Which meeting was that?

14 A. I -- the one that we decided  
15 that we needed to recommend vent and burn of  
16 the -- to the incident commander.

17 Q. And you believe Oxy Vinyls was  
18 at that meeting?

19 A. I believe they were.

20 Q. And did they say, yes, our only  
21 option is to vent and burn the five railcars?

22 MR. BRAGA: Object.

23 THE WITNESS: I do not recall.

24 QUESTIONS BY MS. BROZ:

25 Q. Do you recall what they said at



1     that meeting?

2             A.       They towed the Oxy Vinyls line  
3     that polymerization -- multiple times in  
4     meetings, they said that Dallas doesn't  
5     believe that the cars were polymerizing.

6             Q.       Did they offer an opinion as to  
7     whether it was appropriate to vent and burn  
8     the five vinyl chloride railcars?

9             A.       I'm not going to throw at least  
10    two of those three guys under the bus and  
11    say, yeah, they said they weren't really  
12    sure.

13            Q.       Let me make sure.  
14                    What is your testimony about  
15    what they said at those meetings where the  
16    decision was made to vent and burn the five  
17    vinyl chloride railcars?

18            A.       There was --

19                    MR. BRAGA: Object to the form  
20    of the question.

21                    Go ahead.

22                    THE WITNESS: There was  
23    discussion multiple times, it wasn't  
24    just one meeting, where vent and burn  
25    was discussed by the technical group.

1           Sometimes Oxy was there. Sometimes  
2           Oxy wasn't there. They had another  
3           agenda.

4                       But I'm not going to throw two  
5           of the three people under the bus that  
6           said -- might have said, we don't know  
7           if it's polymerizing. Dallas says  
8           it's not.

9   QUESTIONS BY MS. BROZ:

10           Q.       Okay. My question is a little  
11   bit different.

12                       Did anyone from Oxy Vinyls make  
13   the decision to vent and burn the five vinyl  
14   chloride railcars?

15           A.       That's a totally different  
16   question, ma'am.

17           Q.       It is not. You're just  
18   answering the question you want to answer  
19   that I have not been asking you.

20                       So could you please answer my  
21   question?

22                       Did anyone from Oxy Vinyls make  
23   the decision to vent and burn the five vinyl  
24   chloride railcars?

25           A.       No, ma'am.

1 MR. BRAGA: Are we all done  
2 with the interview transcript?

3 MS. BROZ: For now I am.

4 I think I only have six minutes  
5 left, so I'm going to reserve my time.

6 Okay.

7 VIDEOGRAPHER: Off the record  
8 again?

9 MS. BROZ: Yes, thank you.

10 VIDEOGRAPHER: The time is  
11 3:55 p.m., and we're going off the  
12 record.

13 (Off the record at 3:55 p.m.)

14 VIDEOGRAPHER: The time is  
15 3:58 p.m., and we're back on the  
16 record.

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. ELLIS:

19 Q. Mr. Day, my name is Rob Ellis.  
20 I represent GATX.

21 I have some questions for you  
22 about Exhibit Number 13, which we're also  
23 showing to the jury.

24 Before I get to those, when you  
25 first arrived in East Palestine on Saturday,

1 February 5th, did you go right to the  
2 derailment site?

3 A. We drove by the derailment  
4 site.

5 Q. Okay. How long did you spend  
6 at -- and what time did you get to the  
7 derailment site the morning of February 5th?

8 A. Somewhere around six o'clock.

9 Q. Okay. How long did you spend  
10 there?

11 A. Almost a month.

12 Q. How long did you spend at the  
13 derailment site that morning before you left  
14 to go to the incident command center?

15 A. We passed by the derailment  
16 site.

17 Q. Did you stop?

18 A. No, sir.

19 Q. Okay. And then you went to the  
20 incident command center.

21 How long were you there?

22 A. Some period of time.

23 Q. Do you have any more specific  
24 answer other than "some period of time"? An  
25 hour? Two hours? Five hours? All morning?

1           A.       We were there for a period of  
2     time. We met some people. We were provided  
3     an assignment, and we left the command  
4     center.

5           Q.       Okay. Did you do the call with  
6     Oxy before you left the command center?

7           A.       The call with Oxy was after the  
8     command center.

9           Q.       Okay. And where were you when  
10    you did the call with Oxy?

11          A.       The SPSI trailer on the Leake  
12    Oil side east of the derailment site.

13          Q.       Other than driving past, when  
14    you drove past at 6 a.m., it was dark.

15                   Correct?

16          A.       It was -- there were light  
17    towers up, and you could see the derailment.

18          Q.       Oh.

19                   Did you make any observations  
20    about the site when you drove by on your way  
21    to the incident command center on  
22    February 5th?

23          A.       Wow, that's the derailment.

24          Q.       Other than, wow, it's a  
25    derailment, did you make any other specific

1 observations about the site when you drove by  
2 on your way to the command center on the  
3 morning of February 5th?

4 A. Things were still on fire.

5 Q. Okay. And what specifically,  
6 when you were driving by, did you see on fire  
7 on your way to the incident command center  
8 that morning?

9 A. Some tank cars, hopper cars and  
10 black smoke.

11 Q. Did you identify any specific  
12 tank cars that were on fire that morning when  
13 you drove by?

14 A. No, sir.

15 Q. What time did you arrive on the  
16 scene after you left -- on the derailment  
17 scene when you left the incident command  
18 center?

19 A. We went -- we left the command  
20 center. We went back to the SPSI trailer.  
21 We had a meeting, meetings, and then went to  
22 the Leake Oil side of the derailment to  
23 start -- to meet the commissioner to do the  
24 drone overflight.

25 Q. Okay. When you were at the

1 SPSI sailor -- trailer, could you see the  
2 derailment site?

3 A. No, sir.

4 Q. In the morning when you drove  
5 by, did you witness housing fires on any of  
6 the VCM cars?

7 A. Sir, when I drove to the site,  
8 I had not been given a map. I knew there --  
9 the cars were involved. I didn't know what  
10 direction the train was going. We saw cars  
11 on fire. We went to the command center.

12 Q. Okay. And my question simply  
13 was, when you drove by, did you specifically  
14 witness any housing fires on any of the VCM  
15 cars?

16 MR. LEVINE: Objection.

17 THE WITNESS: There were cars  
18 on fire.

19 QUESTIONS BY MR. ELLIS:

20 Q. My question was, did you  
21 witness any VCM car housings on fire when you  
22 drove by that morning?

23 MR. LEVINE: Objection.

24 THE WITNESS: We can go down  
25 this road a long time --

1 QUESTIONS BY MR. ELLIS:

2 Q. Yes.

3 A. -- and I'll say the exact same  
4 thing. I was not provided the drawing,  
5 knowing which direction the train was going  
6 and what the order of the cars were.

7 There were cars on fire.

8 Q. Okay. And so is it fair to say  
9 then that you didn't identify any specific  
10 housing fires when you drove by that morning?

11 MR. LEVINE: Objection.

12 THE WITNESS: One more time.

13 There were cars on fire.

14 QUESTIONS BY MR. ELLIS:

15 Q. Yes, I understand that. My  
16 question is a little different.

17 My question is, did you see  
18 specifically housings on fire when you drove  
19 by?

20 MR. LEVINE: Objection.

21 THE WITNESS: I'm going to say  
22 it one more time.

23 When we drove by, going to the  
24 command center, I did not know which  
25 direction the train was going. There



1           were cars on fire.

2       QUESTIONS BY MR. ELLIS:

3           Q.       Yes.

4           A.       Fire high. Fire low. Fire to  
5       the left. Fire to the right.

6           Q.       Did you --

7           A.       I did not know what cars were  
8       on fire.

9           Q.       Okay. Did you know what cars  
10       had housings when you drove by?

11          A.       No, I did not.

12          Q.       Okay. And you therefore didn't  
13       identify specifically, when you drove by in  
14       the morning, any specific housings on fire.

15                   Correct?

16                   MR. LEVINE: Objection.

17                   THE WITNESS: There were cars  
18       on fire.

19       QUESTIONS BY MR. ELLIS:

20          Q.       Yes, I understand that.

21                   My question is, did you  
22       specifically, when you drove by in the  
23       morning, identify tank car, VCM tank car,  
24       housings on fire?

25                   MR. LEVINE: Objection.

1 THE WITNESS: I'm going to stop  
2 answering the question, Counsel.

3 MR. BRAGA: Listen to the  
4 question. Do your best to answer it,  
5 and we'll move on.

6 Can you ask the question again?

7 MR. ELLIS: Would you read him  
8 the question back, please?

9 (Court Reporter read back  
10 question.)

11 THE WITNESS: There were tank  
12 cars on fire. There are multiple cars  
13 that have protective housings, some  
14 general service, some pressure cars.

15 I didn't know where in the  
16 train the VCM cars were; that simply  
17 there were cars on fire.

18 QUESTIONS BY MR. ELLIS:

19 Q. Okay. And because you didn't  
20 know where the VCM cars were -- and I'm just  
21 asking when you drove by. We'll get to other  
22 times of the day.

23 When you drove by, you didn't  
24 know whether you were looking at a VCM car or  
25 a different car when you saw cars on fire.

1 Right?

2 A. That's correct.

3 Q. Okay. Now, later you did  
4 identify the VCM cars.

5 Correct?

6 A. Yes, sir.

7 Q. Okay. And you did later that  
8 morning identify the VCM cars.

9 Correct?

10 A. As soon as I got to the command  
11 center and got to see the overflight pictures  
12 that we had, knowing the direction the train  
13 was going -- granted, I was spun around on  
14 direction, we knew -- I found out where the  
15 VCM car pile was and where the other  
16 compressed gas car was.

17 Q. Okay. So when you were at the  
18 command center, someone showed you  
19 photographs of the cars that allowed you to  
20 identify the VCM cars and the one isobutylene  
21 car.

22 Correct?

23 A. Correct.

24 Q. Okay. And was it this photo  
25 that you were shown? Exhibit 13?

1           A.       I don't remember if it was this  
2       one or some other still photos.

3           Q.       Do you know -- once you left  
4       the SPSI trailer and got to the derailment  
5       site later that morning, do you know what  
6       time you arrived at the site?

7           A.       No, sir.

8           Q.       Was it before noon?

9           A.       May have been.

10          Q.       Was it before 9 a.m.?

11          A.       I do not remember.

12          Q.       Okay. Using Exhibit 13, would  
13       you indicate when you first arrived on the  
14       scene the morning of February 5th which VCM  
15       car housings were on fire?

16          A.       Car 31, Car 30 and Car 55.

17          Q.       Okay. During the time that you  
18       were on-scene, were any housings extinguished  
19       and then reignited?

20          A.       No, sir.

21          Q.       So during the entire time you  
22       were on-scene, exhibit -- VCM Cars 30, 31 and  
23       55, were they always -- those housings always  
24       burning?

25          A.       What day are we talking about?

1 Q. February 5th.

2 A. February 5th, 31 and 30 were  
3 burning. Sometime on the 5th, 55 went out.

4 Q. 30 and 31 were burning sometime  
5 on the 5th.

6 Is that correct?

7 A. Burning the whole time. 55 is  
8 the one that went out later in the day.

9 Q. Okay. So 55, do you know what  
10 time the housing on 55 went out?

11 A. No, sir.

12 Q. Was it after noon?

13 A. It could be.

14 Q. Was it before dark?

15 A. It was probably -- it was  
16 confirmed that it was out probably around  
17 dark.

18 Q. Around dark, it was confirmed  
19 that the housing on the VCM car labeled 55 on  
20 Exhibit 13 was extinguished.

21 Is that correct?

22 A. That's correct.

23 Q. Okay. Did that --

24 A. Time out. Extinguished.

25 Identify what you're saying -- what you

1 define as extinguished.

2 Was it put out, or did it burn  
3 out?

4 Q. Well, I was about to ask you  
5 that question.

6 A. Well, ask it.

7 Q. So do you know whether the  
8 car -- the housing on Car 55 was put out or  
9 whether it went out on its own?

10 A. Car 55 went out on its own.

11 Q. Did you witness that?

12 A. No, sir.

13 Q. How did you come to learn that  
14 Car 55 went out on its own?

15 A. Because the crew went up to  
16 perform some damage assessment on Car 55 and  
17 were able to climb up on Car 54, walk down  
18 and get within a few feet of the protective  
19 housing before they started getting elevated  
20 readings of VOCs.

21 Q. Okay. My question was, how did  
22 you learn that Car 55's housing went out on  
23 its own?

24 A. Because the crew went up and  
25 were able to get in close proximity to the

1 car and confirm the fire was not burning in  
2 Car 55.

3 Q. Did somebody tell you that that  
4 car went out on its own?

5 A. I don't remember.

6 Q. That the housing fire on that  
7 car went out on its own? Did somebody tell  
8 you that on the crew?

9 A. We would not have -- nobody on  
10 that crew, whether it's SPSI or SRS, would  
11 have put that fire out, so it would have had  
12 to have burned out.

13 Q. My question was different. My  
14 question was, did somebody on the crew tell  
15 you that they saw the fire go out on its own?

16 A. They saw the fire -- they --  
17 they saw that there was no more fire in  
18 Car 55.

19 Q. My question was, did somebody  
20 on that crew tell you that they saw the fire  
21 go out on its own?

22 A. No.

23 Q. Okay. Did anybody tell you  
24 that they witnessed the housing fire on  
25 Car 55 go out on its own?

1           A.       Didn't I just answer that?

2           Q.       No. I asked you if anybody on  
3 the crew asked -- told you that.

4                   Now I'm asking you if anyone  
5 told you that they saw the housing fire on  
6 Car 55 go out on its own.

7           A.       No, sir.

8           Q.       Car 30, you said it was burning  
9 the entire day of February 5th.

10                   Is that right?

11          A.       That's correct.

12          Q.       Was there anytime where you  
13 witnessed Car 30 having been out and then  
14 restart the housing fire?

15          A.       I don't recall.

16          Q.       Did anybody report to you that  
17 the fire in the housing of Car 30 was out and  
18 then restarted on February 5th?

19          A.       I don't recall.

20          Q.       The car -- the housing fire on  
21 Car 29, that was not -- the housing was not  
22 burning on Car 29 when you got to the scene.

23                   Correct?

24          A.       The housing on Car 29 was not  
25 burning, no, sir.



1 Q. And you never witnessed the  
2 housing on Car 29 burn.

3 Correct?

4 A. That's correct.

5 Q. And the same is true for Car 28  
6 on Exhibit 13; you never witnessed that  
7 housing burn.

8 Correct?

9 A. The protective housing did not  
10 burn on Car 28.

11 Q. Did the protective housing on  
12 Car 29 burn at some time?

13 A. I do not recall.

14 (Day Exhibit 16 marked for  
15 identification.)

16 QUESTIONS BY MR. ELLIS:

17 Q. Would you do Tab 25?  
18 Exhibit 16.

19 Mr. Day, you've been handed  
20 what's been marked as Day Exhibit Number 16.

21 Is this a document you've seen  
22 before?

23 A. I've seen portions of it.

24 Q. When is the last time you saw  
25 portions of it?

1           A.       I don't remember. It's been a  
2 while.

3           Q.       Okay. Directing your attention  
4 to the page on the bottom right that's  
5 numbered 2513, and let me know when you're  
6 there, please.

7           A.       Okay.

8           Q.       Figure 15 in this document,  
9 which is entitled "Hazardous Material Group  
10 Chair's Factual Report," and it's Group B,  
11 Exhibit 10 to the NTSB investigative hearing.

12                   Figure 15 is entitled, "Lead  
13 four vinyl chloride tank cars in situ,  
14 February 5, 2023, 8:44."

15                   Do you see that?

16           A.       Yes, sir. Oh --

17           Q.       Now, in this photograph -- have  
18 you ever seen this photograph before?

19           A.       No, sir.

20           Q.       Now, in this photograph, do  
21 you -- can you identify the VCM cars or car  
22 with a housing fire?

23           A.       That would be Car 31.

24           Q.       And that's the GATX95098 car.  
25 Right?

1           A.       That's correct.

2           Q.       Do you see any other housing  
3   fires in this photograph at 8:44 in the  
4   morning?

5           A.       Not that I can see, no. No,  
6   sir.

7           Q.       You mentioned before that --  
8   but it was your understanding, was it not,  
9   that OCPX80179 and OCPX80235, at some point  
10  those housings burned.

11                   Was that your understanding?

12          A.       Yes, sir.

13          Q.       And how did you get that  
14  understanding? Who told you that?

15          A.       You could see it.

16          Q.       When could you see it?

17          A.       When we were on-scene. And  
18  there's pictures of it.

19          Q.       Do you think -- have you seen  
20  pictures of the 80179 car with the housing  
21  fire on February 5th?

22          A.       I don't know what day. I've  
23  seen pictures where both protective housings  
24  are going, and I believe that 30 is the one  
25  that went off on the 4th.

1           Q.       30 is the one that went --  
2   80179, Car 30, is the VCM car that had the  
3   PRD venting for what was claimed to be  
4   70 minutes on February 4th.

5                   That was your understanding,  
6   correct?

7           A.       Yes, sir.

8           Q.       You were not there then, and  
9   you did not witness that.

10                   Correct?

11          A.       That is correct.

12          Q.       Someone sent you a video of  
13   that, and you circulated it among your team  
14   members on the 4th, though.

15                   Correct?

16          A.       Correct.

17          Q.       You still have that video.  
18                   Right?

19          A.       I believe so.

20          Q.       And then at some point that  
21   housing fire extinguished, as did the one on  
22   80235.

23                   Correct?

24          A.       The fire -- there's no fires  
25   right here, right now, no, sir.

1 Q. And at some point, even you  
2 witnessed their -- those two housings not to  
3 have a housing fire.

4 Correct?

5 A. Correct.

6 Q. Okay. And the same with the  
7 housing --

8 A. Time out.

9 I've never seen the fire not in  
10 the number 30 car, OCPX80179. I've always  
11 seen that protective housing on fire.

12 Q. Oh.

13 A. I don't remember seeing it not  
14 on fire.

15 Q. Okay. So you don't remember  
16 seeing it in its condition that's depicted  
17 here in Figure 15?

18 A. That's correct.

19 Q. All right. And what about on  
20 the 6th? It was burning on the 6th as well?

21 A. I'd have to go back to other  
22 photographs to see if it was burning.

23 Q. As you sit here right now, do  
24 you know whether or not that housing fire was  
25 burning on the 6th?

1           A.       I do not.

2           Q.       Now, I think you testified  
3 earlier that you made the affirmative  
4 decision not to extinguish any housing fires  
5 because it would result in an uncontrolled  
6 flammable gas release.

7                   Correct?

8           A.       That's correct.

9           Q.       Okay. And did you make that  
10 decision on your own, or were there other  
11 people, first responders, on-scene who also  
12 made the affirmative decision not to  
13 extinguish housing fires because it would  
14 result in an uncontrolled flammable gas  
15 release?

16          A.       That is basic HAZMAT 101. You  
17 don't extinguish fires on -- that are  
18 preventing uncontrolled releases of flammable  
19 gases unless you can block them in.

20          Q.       Okay. My question was, I  
21 know -- I heard you say you made the  
22 decision.

23                   Did anybody else on-scene make  
24 the same decision you did to affirmatively  
25 not put housing fires out because it would

1 result in an uncontrolled flammable gas  
2 release?

3 A. You're going to have to speak  
4 to the other people that were on the scene.

5 Q. Okay. So as far as you know,  
6 nobody told you that they made a decision  
7 like you did.

8 Is that right?

9 A. That's correct.

10 Q. In this photograph, is the  
11 80179 car experiencing an uncontrolled  
12 flammable gas release?

13 A. I do not know.

14 Q. Did you do anything to  
15 determine that?

16 A. The only way to do it is put  
17 people in harm's way to go up with air  
18 monitors to identify if there was leaks.

19 Q. Did you do that?

20 A. We did not.

21 Q. What about 80235? Is that  
22 housing undergoing an uncontrolled flammable  
23 gas release in this photograph?

24 A. Without air monitoring, I can't  
25 tell you.

1 Q. Okay. And you never did that,  
2 did you?

3 A. No, sir.

4 Q. Okay. What about for your crew  
5 that saw the housing on Car 55 extinguished?  
6 Did they witness an uncontrolled flammable  
7 gas release?

8 A. They got --

9 MR. LEVINE: Objection.

10 Go ahead.

11 THE WITNESS: The crew  
12 received -- was -- were picking up the  
13 uncontrolled VOCs coming from the  
14 protective housing.

15 QUESTIONS BY MR. ELLIS:

16 Q. And we'll talk about that in a  
17 minute.

18 Was that -- what that crew  
19 reported, was that in your view an  
20 uncontrolled flammable gas release?

21 A. There was a flammable gas  
22 release, yes.

23 Q. My question was, was that in  
24 your view an uncontrolled flammable gas  
25 release?



1           A.       Yes, sir.

2           Q.       What did you do to stop that  
3 uncontrolled flammable gas release?

4           A.       Pulled the crews back.

5           Q.       Did you do anything else other  
6 than pulling the crews back?

7           A.       No, sir.

8           Q.       And did you ever do anything  
9 about any uncontrolled flammable gas release  
10 on any other -- on any of the other VCM cars?

11          A.       No, sir.

12          Q.       On Exhibit 13, you describe the  
13 biggest fire, pool fire, being between  
14 Cars 31 and 45.

15                   Did I understand that  
16 correctly?

17          A.       There was a lot of fire in that  
18 area, yes, sir.

19          Q.       Okay. Was there fire in any  
20 other areas on February 5th that you  
21 witnessed?

22          A.       Over the course of the  
23 derailment, there was fire in a lot of  
24 different areas across the derailment site.

25          Q.       Okay. Right now I'm just on

1 Feb 5.

2 On February 5th, did you  
3 witness any fires other than the area you  
4 indicated between 31 -- Car 31 and 45?

5 A. 31 and 45, that area was --  
6 they had fire, and the 54 was on fire. There  
7 was smoldering in boxcars. So there was  
8 fire -- specific -- sporadic fire throughout  
9 the site.

10 Q. Okay. So between 31 and 45,  
11 you witnessed fire on February 5th, and you  
12 also witnessed fire on Car 54.

13 Was there any fire between  
14 Car 45 and Car 54?

15 A. Not that I saw.

16 Q. And is that the same -- is the  
17 same the case on February 6th?

18 A. There was more fire in the  
19 piles around 45, 44, 43, the plastic pellets,  
20 where a lot of smoke is coming from right  
21 now. There was more active fires on the 6th.

22 Q. Okay. Were there active fires  
23 still on the 6th between 31 and 45?

24 A. There was -- where that black  
25 smoke is, there was fire.

1 Q. In between 31 and 45?

2 A. Yes, sir.

3 Q. Okay. And that happened on the  
4 5th and the 6th.

5 Is that correct?

6 A. It occurred -- is still going.

7 Q. Okay. And the Car 54, that car  
8 was burning on the 5th and the 6th.

9 Is that correct?

10 A. That's correct.

11 Q. What about the areas of 44, 45,  
12 47, was that burning on just the 6th?

13 A. There was fires throughout the  
14 site pretty much the entire time until after  
15 we wrecked the train -- after the vent and  
16 burn.

17 Q. Okay. And would that include  
18 the area of Cars 44, 45 and 47?

19 A. Most of the fire was on the  
20 Leake Oil side. It was more on the 41, 40,  
21 37, 39, 35 area.

22 Q. Okay. Was there any fire in  
23 the 44, 45, 47 area?

24 A. I don't remember.

25 Q. What about Car 50, was that --

1           A.       I don't remember.

2           Q.       Let me finish my question, and  
3 then you can answer it.

4                   What about Car 50? Was that  
5 ever on fire?

6           A.       I don't remember.

7           Q.       What about Car 52? Was that  
8 car ever on fire?

9           A.       Obviously it was at one time.

10          Q.       Did you witness Car 52 on fire  
11 on February 5th or February 6th?

12          A.       No.

13          Q.       You were asked some questions  
14 about placing monitors, unmanned water  
15 streams.

16                   Did you ever make the  
17 affirmative decision not to place monitors at  
18 the scene?

19          A.       I did not.

20          Q.       To your knowledge, did anybody  
21 ever make the affirmative decision not to use  
22 fire monitors at the scene?

23          A.       Fire monitors were used at the  
24 scene.

25          Q.       On the wreck, on the

1     derailment, were fire monitors used?

2             A.       All the fire departments  
3     responded and pumped lots of water on the  
4     site.

5             Q.       Okay.

6             A.       Yes, sir.

7             Q.       On February 5th?

8             A.       Not on February -- they pulled  
9     back.

10            Q.       On February 5th, did you make  
11    the affirmative decision not to use monitors  
12    to spray water on the derailment site?

13            A.       No, sir.

14            Q.       What about on February 6th, did  
15    you make the affirmative decision not to use  
16    fire monitors to spray water on the  
17    derailment site?

18            A.       Fire monitors were used to  
19    protect the structures around the vent and  
20    burn site.

21            Q.       I'm asking about the  
22    derailment, the actual cars.

23                    Did you make a decision on  
24    February 6th not to use monitors to spray the  
25    cars?

1 A. No, sir.

2 Q. At any time did you make the  
3 affirmative decision not to spray waters  
4 using fire monitors on the cars?

5 A. No, sir.

6 Q. To your knowledge, did anybody  
7 make the decision to affirmatively not use  
8 monitors to spray the cars?

9 A. You'd have to talk to anybody.

10 Q. My question is what you know.  
11 To your knowledge, did anybody  
12 make that decision?

13 A. I do not know.

14 Q. Did you ever consider using  
15 monitors to spray water on the cars?

16 A. Consider, yes.

17 Q. When did you first consider  
18 using water to spray the cars?

19 A. Obviously in firefighting 101,  
20 you want to put cooling streams on the car.

21 The unfortunate part is these  
22 are jacketed cars, and the majority of that  
23 water would have washed more contaminants  
24 downstream, and we'd be having a totally  
25 different conversation.

1 Q. My question was, when did you  
2 first make -- consider spraying water using  
3 monitors on the cars at the derailment site?

4 MR. LEVINE: Objection.

5 THE WITNESS: Sometime -- I  
6 would have thought about it sometime  
7 while I was on-scene.

8 QUESTIONS BY MR. ELLIS:

9 Q. Okay. Was that on February 5th  
10 that you thought about it?

11 A. Most likely.

12 Q. Do you remember thinking about  
13 it?

14 A. No, sir.

15 Q. Okay. So you think you might  
16 have thought about it?

17 MR. BRAGA: Object to the form.

18 THE WITNESS: That's -- it's  
19 based on firefighting experience. Put  
20 the wet stuff on the red stuff. It's  
21 how we're taught.

22 QUESTIONS BY MR. ELLIS:

23 Q. Okay. And did I hear you  
24 correct that because the cars were jacketed  
25 and because you didn't want to wash more

1 contaminants downstream and have a different  
2 conversation, you decided not to do that?

3 A. That's correct.

4 Q. Did you discuss that decision  
5 with anybody else on-scene?

6 MR. LEVINE: Objection.

7 THE WITNESS: The discussion  
8 about using unmanned fire monitors  
9 on derailments, it's always a very  
10 ticklish situation. It is considered.  
11 It is discussed. If it's needed,  
12 we're going to -- we're going to apply  
13 water.

14 QUESTIONS BY MR. ELLIS:

15 Q. My question was different.  
16 Did you discuss it with anyone  
17 else on the scene?

18 A. Break.

19 MR. LEVINE: Objection.

20 MR. ELLIS: We're not off the  
21 record, so...

22 THE WITNESS: I need a break.

23 MR. BRAGA: Okay. We'll be  
24 back.

25 MR. ELLIS: Okay.



1 VIDEOPHOTOGRAPHER: All right. The  
2 time is 4:27 p.m. We're going off the  
3 record.

4 (Off the record at 4:27 p.m.)

5 VIDEOPHOTOGRAPHER: The time is  
6 4:32 p.m., and we're back on the  
7 record.

8 QUESTIONS BY MR. ELLIS:

9 Q. Okay. Before you called the  
10 break, Mr. Day, we were discussing your  
11 discussion about using unmanned fire monitors  
12 on the derailment scene.

13 And my question was, did you  
14 discuss that with anybody else on-scene on  
15 February 5th?

16 A. No, sir.

17 MR. LEVINE: Objection.

18 QUESTIONS BY MR. ELLIS:

19 Q. Did you discuss that with  
20 anyone on-scene on February 6th?

21 A. No, sir.

22 Q. Did anybody discuss that  
23 subject on February 5th or 6th with you?

24 MR. BRAGA: Objection.

25 THE WITNESS: No, sir.

1 QUESTIONS BY MR. ELLIS:

2 Q. Now, before you said that  
3 Car 55, you had a crew that climbed up on  
4 Car 54, the hopper car, to get a look at the  
5 housing, and that housing was not burning.

6 Correct?

7 A. Yes, sir.

8 Q. You said, I believe, that your  
9 crew -- who was on that crew?

10 A. I believe that was Drew McCarty  
11 and a technician.

12 Q. Do you know the name of the  
13 technician?

14 A. No, sir.

15 Q. Was that a technician that  
16 worked for SRS or SPSI?

17 A. Could have been either.

18 Q. And you, I think, testified  
19 that that crew got a reading from a device  
20 that indicated to you that there was an  
21 uncontrolled flammable gas release occurring  
22 from Car 55.

23 Is that correct?

24 A. There was elevated VOC reading  
25 in close proximity -- in somewhat close

1 proximity to the protective housing.

2 Q. Was there an uncontrolled  
3 flammable gas release?

4 A. There was a VOC reading.

5 Q. My question was, was there an  
6 uncontrolled flammable gas release occurring  
7 from Car 55 when the crew was taking the  
8 reading?

9 A. There was an elevated VOC  
10 reading from the protective housing.

11 Q. Okay. Do you know whether  
12 there was an uncontrolled flammable gas  
13 release occurring from that car when the crew  
14 was taking the measurement?

15 A. There was an elevated VOC  
16 reading coming from the protective housing.

17 Q. Does an elevated VOC reading  
18 indicate to you that there is an uncontrolled  
19 flammable gas release occurring from that  
20 car?

21 A. It is possible.

22 Q. My question was, does that  
23 indicate to you that it is occurring?

24 A. We had an elevated reading of  
25 VOCs coming from the protective housing.

1 Q. Okay. Did that indicate to you  
2 that there was an uncontrolled flammable gas  
3 release occurring from that housing?

4 A. It told me that there was an  
5 elevated reading of VOCs in that -- from that  
6 protective housing.

7 Q. Did it tell you anything other  
8 than that there was an elevated VOC reading  
9 coming from that area?

10 A. That's exactly what it told me,  
11 yes, sir.

12 Q. And anything else?

13 A. That there was an uncontrolled  
14 release of VOCs at an elevated level.

15 Q. Okay. So you determined that  
16 there was an uncontrolled release at an  
17 elevated level from Car 55.

18 Right?

19 A. Yes, sir.

20 Q. And as a result, you ordered  
21 the crew to withdraw.

22 Is that correct?

23 A. The crew withdrew, yes, sir.

24 Q. But did you order the crew to  
25 withdraw, or did the crew withdraw on its

1 own?

2 A. Restate the question.

3 Q. Did you order the crew to  
4 withdraw, or did the crew withdraw on its  
5 own?

6 MR. LEVINE: Objection.

7 THE WITNESS: The crew came  
8 out.

9 QUESTIONS BY MR. ELLIS:

10 Q. Did it come out because of the  
11 elevated VOC reading?

12 A. You'd have to take it up with  
13 the crew.

14 Q. Okay. Do you know why the crew  
15 withdrew that morning after it took the  
16 reading?

17 A. I do not.

18 Q. Did you ever do anything with  
19 respect to Car 55 and the VOCs that you  
20 believed were being released from the car?

21 MR. LEVINE: Objection.

22 MR. BRAGA: Objection.

23 THE WITNESS: We monitored the  
24 area sporadically, and that's about  
25 it.

1 QUESTIONS BY MR. ELLIS:

2 Q. Okay. And what did you do --  
3 when you say "monitored sporadically," what  
4 do you mean?

5 A. We would go in and take  
6 temperatures and run air monitoring readings.

7 Q. What equipment did you use to  
8 run the air monitoring readings?

9 A. PID.

10 Q. How many times did you take PID  
11 readings from Car 55?

12 A. Every time we went in and got  
13 temperatures.

14 Q. Did you do the PID readings  
15 yourself?

16 A. No, sir.

17 Q. Did you do any of the  
18 temperature readings yourself?

19 A. Some.

20 Q. Okay. Which temperature  
21 readings did you do?

22 A. Ones that were relayed back to  
23 the SPSI folks.

24 Q. Okay. Were they on Car 55?

25 A. No, sir. I was down on the big

1 pile.

2 Q. So you never did PID readings  
3 of Car 55, and you never did temperature  
4 readings of Car 55.

5 Is that correct?

6 A. That's correct.

7 Q. Looking at Exhibit 13, can you  
8 identify, please, the VCM cars for which you  
9 did do, yourself, temperature readings.

10 A. 30 and 31.

11 Q. 30 and 31.

12 31 is GATX95098.

13 Correct?

14 A. 30 is OCPX80179.

15 Q. Yeah, I think I mentioned 31.

16 31 is 95098, and 30 is the Oxy  
17 car you just identified.

18 Correct?

19 A. 31 is GATX95098.

20 Q. And you knew at some point when  
21 you arrived on the scene that there was one  
22 VCM car owned by GATX.

23 Right?

24 A. I -- when I arrived on-scene,  
25 no, sir, I did not.

1 Q. When is the first time that you  
2 learned that one of the cars was a GATX-owned  
3 car?

4 A. When I saw the consist.

5 Q. When did you see the consist?

6 A. I don't remember. It would  
7 have been on the first day when we were  
8 getting our assignments.

9 Q. Okay. So sometime on  
10 February 5th, you learned that GATX had one  
11 of the VCM cars, owned one of the VCM cars.

12 Correct?

13 A. Yes, sir.

14 Q. Did you review any information  
15 regarding specifically the GATX95098 car?

16 MR. BRAGA: Object to the form.

17 MR. LEVINE: Objection.

18 THE WITNESS: So GATX95098 is  
19 basically a 105J300W tank car, which  
20 is identical to the TILX and the OCPX  
21 cars.

22 QUESTIONS BY MR. ELLIS:

23 Q. Okay.

24 A. So once you realize that you  
25 have five VCM cars, you pretty much know what



1 the classification of the cars are.

2 Q. Did you review any information  
3 specifically about GATX95098 on February 5th?

4 A. No, sir.

5 Q. Did you review any information  
6 specifically about GATX95098 on February 6th?

7 A. No, sir.

8 Q. Did you receive any drawings  
9 for 95098 at any time while you were on-scene  
10 February 5th or February 6th?

11 MR. BRAGA: Object to the form.

12 THE WITNESS: There was some  
13 discussions sometime. I don't know --  
14 I can't put my finger on the exact  
15 time, but there was some discussion  
16 about getting the engineer drawings of  
17 the cars. But since they were all  
18 105J300W tank cars, you have one, you  
19 have them all.

20 QUESTIONS BY MR. ELLIS:

21 Q. Okay. And because they were  
22 all the same, you never looked at anything  
23 specific to 95098.

24 Right?

25 A. That is correct.

1 Q. Okay. And between February 3rd  
2 and February 6th, you had no communications  
3 with GATX, anyone at GATX.

4 Correct?

5 A. No, sir.

6 Q. That was little ships passing  
7 in the night.

8 Am I correct that you had no  
9 communications with anyone from GATX between  
10 February 3rd and February 6th?

11 MR. BRAGA: Object to the form.

12 THE WITNESS: Are you asking a  
13 question?

14 QUESTIONS BY MR. ELLIS:

15 Q. Yes. I'm asking you, isn't it  
16 true you had no communications with GATX  
17 between February 3rd and February 6th?

18 A. Correct.

19 Q. You didn't ask any information  
20 from GATX between the 3rd and the 5th -- or  
21 the 6th of February.

22 Correct?

23 MR. BRAGA: Object to the form.

24 THE WITNESS: There was no  
25 communications between myself and GATX

1 on any of those days.

2 QUESTIONS BY MR. ELLIS:

3 Q. I take it then that you never  
4 advised GATX that you were going to vent and  
5 burn its 95098 tank car.

6 Correct?

7 MR. LEVINE: Objection.

8 MR. BRAGA: Object to the form.

9 THE WITNESS: That would have  
10 had to come from the Norfolk Southern.

11 QUESTIONS BY MR. ELLIS:

12 Q. My question simply was, you  
13 never made the call.

14 Correct?

15 A. That's not in my -- that's not  
16 what I was brought to the scene to do.

17 Q. And because it wasn't what you  
18 brought to the scene to do, you never talked  
19 to anyone about venting and burning 95098 at  
20 GATX.

21 Right?

22 A. Never spoke to them.

23 MR. LEVINE: Objection.

24 THE WITNESS: I never spoke to  
25 anybody from GATX about this car.

1 QUESTIONS BY MR. ELLIS:

2 Q. Did you ever speak with anybody  
3 at GATX about the derailment?

4 A. Over the course of the next  
5 several months after the incident, I talked  
6 to a lot people about the incident.

7 Q. At GATX?

8 A. I spoke to a lot of people. I  
9 don't remember all the people I spoke to.

10 Q. Okay. Can you identify  
11 specifically as you sit here today anybody at  
12 GATX with whom you had a conversation about  
13 the East Palestine derailment?

14 A. Not about East Palestine.

15 Q. Have you ever -- since you  
16 qualified it "not about East Palestine," as  
17 you sit here today, do you recall  
18 conversations with GATX, anybody at GATX,  
19 about a vent and burn?

20 A. No, sir.

21 Q. What about VCM railcars? Have  
22 you had conversations with anybody at GATX  
23 about VCM railcars since the derailment?

24 A. No, sir.

25 Q. You agree that the decision to

1 vent and burn a railcar is a very serious  
2 decision.

3 Right?

4 MR. BRAGA: Object to the form.

5 THE WITNESS: That's a very  
6 serious decision, yes, sir.

7 QUESTIONS BY MR. ELLIS:

8 Q. You knew that you'd be  
9 releasing hazardous substances into the  
10 environment when you vent and burned those  
11 five VCM cars.

12 Right?

13 A. When the vent and burn  
14 operation occurred, yes, sir.

15 Q. And you knew that that was  
16 going to occur.

17 Right?

18 A. Yes, sir.

19 Q. You also knew that people could  
20 get hurt either from the explosion or from  
21 the release of hazardous substances when you  
22 did the vent and burn.

23 Right?

24 A. Yes, sir.

25 Q. And given that it was five cars

1 and not just one VCM car, it made it all the  
2 more important.

3 Correct?

4 MR. BRAGA: Object to the form.

5 THE WITNESS: You're not quite  
6 understanding the gravity of what it  
7 takes to decide to do this and how  
8 it's done.

9 It's not like we can go in and  
10 grab, for example, TILX and say, we're  
11 going to vent and burn that one.  
12 Because of the size of the fire, you  
13 have to either move cars out of the  
14 way or take them all out at the same  
15 time.

16 QUESTIONS BY MR. ELLIS:

17 Q. Okay. My question was simply  
18 because it was five, it's all the more  
19 significant.

20 Correct?

21 MR. LEVINE: Objection.

22 THE WITNESS: It was a  
23 significant incident, yes, sir.

24 QUESTIONS BY MR. ELLIS:

25 Q. And because it can have such

1 catastrophic consequences, that's something  
2 you want to carefully weigh before you make  
3 the decision to vent and burn.

4 Correct?

5 MR. BRAGA: Object to the form.

6 MR. LEVINE: Objection.

7 THE WITNESS: The  
8 recommendation to the NS to perform  
9 the vent and burn operation was very  
10 heavy on everybody that was making the  
11 recommendation to them to take it to  
12 the incident commander.

13 QUESTIONS BY MR. ELLIS:

14 Q. The decision to vent and burn  
15 was a decision of last resort.

16 Right?

17 A. It's the final option.

18 Q. A decision of last resort.

19 Right?

20 A. It's the final option.

21 Q. Okay. And because it's the  
22 final option, you want to exhaust all other  
23 alternatives before you make that very  
24 important decision.

25 True?

1 MR. BRAGA: Object to the form.

2 THE WITNESS: Which is exactly  
3 what we did.

4 QUESTIONS BY MR. ELLIS:

5 Q. And you want to have good,  
6 accurate information, including scientific  
7 information, before you make a decision as  
8 significant as a vent and burn decision.

9 Correct?

10 MR. BRAGA: Objection.

11 THE WITNESS: Yes, sir.

12 QUESTIONS BY MR. ELLIS:

13 Q. You want to bring the best  
14 scientific minds available and as much  
15 scientific expertise as you can before you  
16 make that decision.

17 Correct?

18 MR. BRAGA: Objection.

19 MR. LEVINE: Objection.

20 THE WITNESS: The gravity of  
21 making the decision to vent and burn  
22 these cars was not taken lightly  
23 whatsoever. We had people helping us  
24 make this recommendation.

25 Reviewing what we were seeing,



1           talking about what we were seeing,  
2           coming up with are there other  
3           solutions, going through our checklist  
4           of transfer, clear, hot-tap, cold-tap,  
5           before we got to vent and burn. Each  
6           one of those was weighed very, very  
7           heavily, multiple times, before the  
8           decision was made, the recommendation  
9           was made, for the incident commander  
10          to decide vent and burn or not.

11       QUESTIONS BY MR. ELLIS:

12           Q.       Okay. And it was a group of  
13       you making that decision that you all knew  
14       was a very, very serious decision.

15                    Correct?

16                    MR. LEVINE: Objection.

17                    THE WITNESS: Yes, sir.

18       QUESTIONS BY MR. ELLIS:

19           Q.       Okay. And --

20           A.       Excuse me.

21           Q.       -- you knew that people might  
22       have questions after the fact about why you  
23       made that decision.

24                    Right?

25                    MR. BRAGA: Object to the form.

1 THE WITNESS: Every decision  
2 that's made is usually Monday morning  
3 quarterbacked, yes.

4 QUESTIONS BY MR. ELLIS:

5 Q. Okay. So when you made the  
6 decision to do the vent and burn, you knew  
7 that people later might have questions about  
8 why you did it or what decision-making you  
9 went through.

10 Right?

11 MR. BRAGA: Objection.

12 THE WITNESS: Yes, sir.

13 QUESTIONS BY MR. ELLIS:

14 Q. And in fact, I think you said  
15 that this vent and burn decision was the  
16 toughest decision you've ever made.

17 Right?

18 A. One of the toughest decisions,  
19 yes, sir.

20 Q. It was the toughest decision  
21 you ever made. You told someone that.

22 Didn't you?

23 A. It's one of the toughest  
24 decisions I've ever made.

25 Q. And in fact your company

1 wouldn't make that decision until it had a  
2 complete indemnity from Norfolk Southern.

3 Correct?

4 A. Negative.

5 MR. BRAGA: Object to the form.

6 QUESTIONS BY MR. ELLIS:

7 Q. Well, your company does have an  
8 indemnity from Norfolk Southern.

9 Doesn't it?

10 A. That's nice to know. No, I did  
11 not know that.

12 MS. COLLIER: Tab 11.

13 VIDEOGRAPHER: Exhibit 17.

14 (Day Exhibit 17 marked for  
15 identification.)

16 QUESTIONS BY MR. ELLIS:

17 Q. 17.

18 Mr. Day, you've been handed  
19 what's been marked as Exhibit 17. Have you  
20 ever seen this before?

21 A. No, sir.

22 Q. Were you ever involved in  
23 discussions with Bobby Breed about SRS  
24 needing an indemnity?

25 A. The only indemnity that I

1 was -- the paperwork that I was involved in  
2 was for ESI.

3 Q. Because you knew that the vent  
4 and burn decision was so significant, and  
5 because you knew that people would be looking  
6 afterwards and wanting to know why you made  
7 the decision you wanted to make, you  
8 ultimately made, you wanted to keep good and  
9 accurate records of your decision-making.

10 Didn't you?

11 MR. LEVINE: Objection.

12 THE WITNESS: I'm not sure how  
13 to answer that question.

14 QUESTIONS BY MR. ELLIS:

15 Q. Well, don't you think it would  
16 have been a good idea to make a clear,  
17 written record of such a significant decision  
18 as making -- as venting and burning five VCM  
19 cars?

20 MR. LEVINE: Objection.

21 MR. BRAGA: Objection.

22 THE WITNESS: Had I taken  
23 copious amounts of notes, they would  
24 have all been discovered, and we'd be  
25 going line item for line item through

1           this entire thing.

2       QUESTIONS BY MR. ELLIS:

3           Q.       And that's why you didn't keep  
4       the notes?

5           A.       Pretty much.

6                   MR. BRAGA: Object to the form.

7       QUESTIONS BY MR. ELLIS:

8           Q.       At the time the vent and burn  
9       was executed, are you aware of anybody making  
10      a written record of the reasons for the vent  
11      and burn?

12          A.       No, sir.

13          Q.       Do you know why nobody made a  
14      written record of the reasons for the vent  
15      and burn?

16                   MR. LEVINE: Objection.

17                   MR. BRAGA: Object to the form.

18                   THE WITNESS: You'd have to ask  
19      anybody.

20      QUESTIONS BY MR. ELLIS:

21          Q.       At the time the vent and burn  
22      was executed, the temperatures in all the VCM  
23      cars were stable or decreasing.

24                   Right?

25          A.       Okay.

1 Q. Are you aware of that?

2 A. No, sir.

3 Q. Are you -- let's talk about the  
4 temperatures you took then.

5 A. Okay.

6 Q. We were looking at Exhibit 13.

7 Which cars on Exhibit 13 did  
8 you personally take temperature measurements  
9 for?

10 A. 30 and 31.

11 Q. When did you take temperature  
12 measurements for 30 and 31?

13 A. The evening of the 5th.

14 Q. How many temperature readings  
15 did you take for 30 and 31?

16 A. I don't remember.

17 Q. Did you do it hourly?

18 A. No, sir. Just one time.

19 Q. Just once.

20 So you took one temperature  
21 reading for Car 30 and one temperature  
22 reading for Car 31.

23 Is that correct?

24 A. I didn't say that.

25 Q. Okay. What did you say?

1                   How many readings did you take  
2   for Car 30?

3           A.       Several.

4           Q.       When did you do those?

5           A.       The evening of February 5th.

6           Q.       Do you know the time?

7           A.       No, sir.   Dark.

8           Q.       Did you make a written record?

9           A.       Radio communications back to  
10   SPSI, who was taking records -- keeping  
11   records.

12          Q.       Did you do it hourly?

13          A.       I only did it one time.

14          Q.       And you took multiple readings  
15   on Car 30 that one time.

16                   Is that correct?

17          A.       That's correct.

18          Q.       What equipment were you using?

19          A.       A laser pointer IR gun.

20          Q.       Where were you pointing the  
21   laser?

22          A.       Through holes in the jacket at  
23   the shell and around the bolsters.

24          Q.       So you took some through the  
25   jacket at the actual shell and some at the

1     bolster.

2                     Is that correct?

3             A.       That's correct.

4             Q.       Were all the readings the same?

5             A.       No, sir.

6             Q.       And did you radio back each of  
7     those readings and identify where the  
8     specific reading came from?

9             A.       I radioed back that Car 30,  
10    which we would give the car number itself, A  
11    end, B end, right side, left side, top,  
12    bottom, bolster.

13            Q.       Okay. So you identified for  
14    the person at SPSI on the other end of the  
15    radio where specifically you were pointing  
16    the laser and what the reading was.

17                     Is that correct?

18            A.       Correct.

19            Q.       Have you ever seen a written  
20    recording of that?

21            A.       I've seen several bits of  
22    information.

23            Q.       My question is, have you ever  
24    seen a written recording of what you radioed  
25    back, the multiple readings at different



1 parts of the tank at the same time?

2 A. No, sir.

3 Q. Did you ever ask to see that?

4 A. No, sir.

5 Q. You were mentioning that you  
6 didn't want to cool the tanks with water  
7 because they were jacketed, and it makes --  
8 it doesn't help to cool jacketed tanks with  
9 water.

10 Is that -- is that your  
11 testimony?

12 A. Yes, sir.

13 Q. Going back to Exhibit 4. Would  
14 you get Exhibit 4?

15 MR. BRAGA: He has it.

16 QUESTIONS BY MR. ELLIS:

17 Q. Exhibit 4 is The Chlorine  
18 Institute Pamphlet 171 that specifically  
19 addresses VCM tank cars, including those  
20 engulfed by fire.

21 Correct?

22 A. Vinyl Chloride Monomer Tank Car  
23 & Cargo Tank Handling Manual, yes, sir.

24 Q. And there's a specific section,  
25 is there not -- are you familiar with this?

1           A.       I have seen it, and I've been  
2 involved in it, yes, sir.

3           Q.       And when you say "involved in  
4 it," you mean you wrote some of it?

5           A.       I was involved in some of the  
6 meetings leading up to it.

7           Q.       Okay. So this is a document  
8 you're very familiar with?

9                   MR. LEVINE: Objection.

10                  THE WITNESS: Define "very."

11 QUESTIONS BY MR. ELLIS:

12           Q.       Well, I want to know. I'm  
13 asking you. Is this a document that you're  
14 very familiar with?

15                   MR. LEVINE: Objection.

16                   MR. BRAGA: Objection.

17                  THE WITNESS: This is a  
18 document that I use, I reference,  
19 to -- for VCM incidents.

20 QUESTIONS BY MR. ELLIS:

21           Q.       Did you reference it for this  
22 specific VCM incident in East Palestine?

23           A.       I do not recall.

24           Q.       Was it available -- did you  
25 have it in writing with you when you were in

1 East Palestine?

2 A. When I was there, no, sir.

3 Q. You didn't bring it with you?

4 A. I did not.

5 Q. Why not?

6 A. I don't know.

7 Q. Directing your attention to

8 page 40 --

9 A. 40.

10 Q. -- there's a Section 10.4.8

11 entitled "Tank in a Fire."

12 Do you see that?

13 A. Not yet.

14 Q. And incidentally, how many  
15 times have you dealt with a derailment where  
16 a VCM car was involved?

17 A. A lot.

18 Q. Were those incidents all  
19 involving the same type of tank? 105J?

20 A. I believe many years ago, VCM  
21 was carried in a 112J.

22 Q. Okay. But all the current,  
23 more recent situations you've been involved  
24 with where a tank car involving VCM was  
25 involved, it was a 105J.

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1 Right?

2 A. There were -- they still -- I  
3 believe they -- I believe they still have  
4 112s in service.

5 Q. Okay.

6 A. In VCM service.

7 Q. Would you say the majority of  
8 the tank incidents you've been involved with  
9 involving VCM have been 105J cars?

10 A. No, sir.

11 Q. They've been the other kind?

12 A. They've been both kinds.

13 Q. Okay. Are the older kinds  
14 jacketed?

15 A. They're -- pretty much  
16 everything that's in flammable gas service  
17 now is required to be jacketed.

18 Q. Okay. And this particular  
19 pamphlet is from 2018.

20 Correct?

21 A. That's correct.

22 Q. So it would apply to tanks in  
23 use in 2018 and through the present.

24 Right?

25 A. Yes, sir.

1 Q. Including those that carry VCM.  
2 Correct?

3 A. Correct.

4 Q. Okay. And in Section 10.4.8,  
5 Tank in a Fire, it says, "If a tank is  
6 engulfed by fire," third bullet point.

7 Would you read into the record  
8 what that says?

9 A. No, go ahead.

10 Q. Would you read into the record  
11 what that says?

12 A. "A water spray on the tank in  
13 the fire may help reduce temperature and  
14 pressure rise."

15 Q. And that doesn't say anything  
16 about needing to take the jacket off.

17 Does it?

18 A. Nope.

19 Q. And then the next bullet point,  
20 would you read that one into the record?

21 A. "VCM tanks not directly in  
22 fire, but in line of sight of fire, will  
23 typically heat up due to radiant heat. These  
24 tanks should be sprayed with water fog, as it  
25 will help reduce rate of pressure increase

1     within the tank."

2             Q.       And that doesn't say anything  
3     about taking the jacket off either.

4                     Does it?

5             A.       No, sir.

6             Q.       Would you get Exhibit 2 out,  
7     please?

8             A.       Okay.

9             Q.       Exhibit 2 is the Emergency  
10    Response Guide that you talked about earlier  
11    today that you use in responding to incidents  
12    like the one in East Palestine.

13                    Correct?

14            A.       Yes, sir.

15            Q.       Okay. And on page 169 of this  
16    exhibit -- it's the third page in if you  
17    count the cover page -- there's a section in  
18    here that discusses fire involving tanks.

19                    Correct?

20            A.       Yes, sir.

21            Q.       The second bullet point, would  
22    you read that into the record, please?

23            A.       "Water fog or spray."

24            Q.       I'm sorry, "Fire Involving  
25    Tanks."

1 Do you see that section?

2 A. Oh, yes.

3 Q. Okay. And now that we're on  
4 the same area, in Fire Involving Tanks,  
5 there's a second bullet point.

6 Would you read that into the  
7 record?

8 A. "Fight fire from a maximum  
9 distance or use unmanned master stream  
10 devices or monitor nozzles."

11 Q. Okay. That's the first bullet.  
12 And then right underneath, what  
13 does it say?

14 A. This is not a reading  
15 comprehension deal, sir. If you want to read  
16 it, knock yourself out.

17 Q. Answer my question, please.  
18 What does the second bullet  
19 point in Exhibit 2 say?

20 MR. BRAGA: Just read it into  
21 the record.

22 THE WITNESS: "Cool containers  
23 with flooding quantities of water  
24 until well after fire is out."  
25

1 QUESTIONS BY MR. ELLIS:

2 Q. Okay. And that doesn't say  
3 anything about taking the jacket off.

4 Does it?

5 A. No, sir.

6 Q. And the fifth bullet point?

7 A. "Do not direct water at source  
8 or leak or safety devices; icing may occur."

9 Q. I'm sorry. The one, two,  
10 three, four, five, sixth bullet point.

11 MR. BRAGA: The one that begins  
12 with --

13 THE WITNESS: "For massive  
14 fire, use unmanned master stream  
15 devices or monitor nozzles. If this  
16 is impossible, withdraw and let the  
17 area -- from area and let fire burn."

18 QUESTIONS BY MR. ELLIS:

19 Q. Okay. And that doesn't say  
20 anything about taking jackets off.

21 Does it?

22 A. No, sir.

23 Q. Now going back to your  
24 temperature reading taking -- your  
25 temperature readings that you took on the



1 various VCM cars. And if we get Exhibit 13  
2 back up so the jury can have an  
3 understanding.

4 We talked about the one  
5 instance where you took temperature  
6 measurements on Car 30, and you got several  
7 measurements in one instance, and you radioed  
8 those back to someone at SPSI.

9 Correct?

10 A. Correct.

11 Q. And then did you do the same at  
12 the same time with respect to Car 31?

13 A. After it, yes, sir.

14 Q. Okay. So you did Car 30 first,  
15 and then you did Car 31.

16 Is that correct?

17 A. I don't remember which  
18 direction -- which one I did first.

19 Q. Okay. And you do those two,  
20 and if -- I think I remember those are the  
21 only two you did.

22 Correct?

23 A. That's correct.

24 Q. And where, when you were taking  
25 the measurements on Car 31, did you point the

1 laser?

2 A. A end, B end, any cracks in  
3 the -- or holes in the jacket, and up against  
4 the bolsters.

5 Q. The A end?

6 A. And B end.

7 Q. The B end, where there were  
8 cracks in the jacket where you could see the  
9 actual tank.

10 Is that correct?

11 A. The shell.

12 Q. The shell?

13 A. Yes, sir.

14 Q. Okay. And on the bolster. So  
15 those four locations.

16 Is that correct?

17 A. Correct.

18 Q. And I take it that you yourself  
19 did not record any of the temperatures that  
20 you were measuring.

21 Correct?

22 A. You're absolutely correct.

23 Q. You radioed those back to  
24 someone. You don't remember who.

25 Correct?

1           A.       Correct.

2           Q.       Where specifically on the A end  
3 were you pointing the laser?

4           A.       Where there was a hole in the  
5 jacket.

6           Q.       So there was a hole in the  
7 jacket in the A end of Car 31, and you were  
8 pointing the laser through the jacket onto  
9 the shell?

10          A.       Correct.

11          Q.       Where were you pointing the  
12 B -- the laser when you were measuring the  
13 temperature on the B end?

14          A.       If we found holes in the  
15 jacket.

16          Q.       Okay. So you, on the evening  
17 of the 5th, found holes in the jacket on  
18 Car 31, and you pointed your laser through  
19 those holes onto the shell.

20                   Is that correct?

21          A.       Yes, sir.

22          Q.       And then you took the bolster.  
23                   Where on the bolster did you  
24 point the laser?

25          A.       On the bolster, as close to the

1 shell as possible. The oil pads.

2 Q. And I take it you didn't make  
3 any recording of specifically where -- either  
4 by photograph or written description of  
5 specifically where you were pointing the  
6 laser.

7 Correct?

8 A. Correct.

9 Q. And then the last place you  
10 said you were doing it is where? A end, B  
11 end, bolster as close to the shell as  
12 possible.

13 And where was the fourth?

14 A. On the right and on the left.

15 Q. On the right and the left?

16 A. On the right and the left.

17 Q. Okay. So six places on Car 31.

18 Correct?

19 A. Where there were holes in the  
20 jacket.

21 Q. Okay. So there was a hole in  
22 the jacket on the right side and a hole in  
23 the jacket on the left side, and you pointed  
24 your laser through those holes and got a  
25 reading on the shell.

1 Correct?

2 MR. LEVINE: Objection.

3 THE WITNESS: Anywhere that we  
4 could get a -- get readings against  
5 the shell of the car is where we  
6 pointed the lasers.

7 QUESTIONS BY MR. ELLIS:

8 Q. Okay. But what I want to know  
9 is, on the evening of the 5th when you were  
10 doing Car 31, was there a hole on the left  
11 side of the shell of the tank where you were  
12 able to get the shell temperature?

13 A. Must have been.

14 Q. Do you remember that?

15 A. There had to have been if I  
16 said it.

17 Q. Okay. And same on the right  
18 side, there must have been a hole on the  
19 right side that you could get the laser  
20 through and get the shell?

21 A. Yes, sir.

22 Q. Okay. So six readings overall.  
23 Were they all the same?

24 A. No, sir.

25 Q. What were -- what was the

1 difference?

2 MR. BRAGA: Object to the form.

3 THE WITNESS: They were

4 different.

5 QUESTIONS BY MR. ELLIS:

6 Q. How different?

7 A. I don't remember.

8 Q. Do you remember any of the  
9 readings at all?

10 A. No, sir.

11 Q. Going back to Car 30, do you  
12 remember any of the readings at all?

13 A. No, sir.

14 Q. Do you remember at all the  
15 range of differences that you got?

16 A. No, sir.

17 Q. Other than those two times, did  
18 you take any other temperature measurements  
19 on any of the VCM cars on February 5th or  
20 February 6th?

21 A. No.

22 Q. Did you take any measurements  
23 of any kind on any of the VCM cars other than  
24 the two we've just discussed?

25 A. Me personally, no.

1 MR. ELLIS: Can we just take a  
2 five-minute break here?

3 MR. BRAGA: Sure.

4 VIDEOGRAPHER: The time is  
5 5:04 p.m., and we're going off the  
6 record.

7 (Off the record at 5:04 p.m.)

8 VIDEOGRAPHER: The time is  
9 5:15 p.m., and we're back on the  
10 record.

11 QUESTIONS BY MR. ELLIS:

12 Q. Mr. Day, you were talking  
13 about -- or we were discussing your  
14 temperature measurements that you took on  
15 February 5th on two of the VCM cars.

16 And you, I think, said you were  
17 using an IR laser-pointed gun.

18 Right?

19 A. Correct.

20 Q. Okay. Do you know what model?

21 A. No, sir.

22 Q. Where did you get it?

23 A. Out of my wreck bag.

24 Q. Out of your wreck bag?

25 A. Yes.

1 Q. What is a wreck bag?

2 A. A bag that has wreck -- wreck  
3 equipment, clothes, monitor.

4 Q. Do you have a bag that you keep  
5 packed or you have available for when you  
6 need to go to a train derailment or a wreck?

7 A. In an emergency, yes, sir.

8 Q. Okay. And that's what you  
9 called your wreck bag?

10 A. Yes.

11 Q. And your IR gun is in there?

12 A. Yes, sir.

13 Q. Is it in there now?

14 A. Yes, sir. No, it's not. It's  
15 in Boston.

16 Q. Okay. Your IR gun is in  
17 Boston?

18 A. On a job.

19 Q. Okay. Does it store readings?

20 A. No, sir.

21 Q. When's the last time -- let me  
22 ask you this.

23 Does it require calibration?

24 A. No, sir.

25 Q. How far away were you when you



1     were taking your temperature readings?   How  
2     far away from the VCM cars were you?

3                     MR. BRAGA:   Object to the form.  
4                     Go ahead.

5                     THE WITNESS:   My distance was  
6                     somewhere between six and zero inches.

7     QUESTIONS BY MR. ELLIS:

8             Q.       Did you ever make contact with  
9     the tanks with your gun?

10            A.       It was not a contact  
11   thermometer.

12            Q.       Okay.   My question was, did you  
13   ever make contact?

14            A.       It's not a contact thermometer.  
15   It's an IR gun.

16            Q.       I understand that.   I  
17   understand.   But you said somewhere between  
18   zero and six, and zero to me is contact.

19                    So was it zero?   Did you make  
20   contact with your gun?

21            A.       I do not remember.

22            Q.       Okay.   You don't recall one way  
23   or the other.

24                    Is that right?

25            A.       Zero to six inches with a gun,

1 that's where I was reading from.

2 Q. Okay. And you don't recall one  
3 way or another whether you made contact with  
4 the tank.

5 Right?

6 A. That's correct.

7 Q. Were you using the same  
8 distance for every reading?

9 MR. BRAGA: Object to the form.

10 THE WITNESS: So the -- a tank  
11 car -- the way the tank cars are  
12 built, you have the inner shell, you  
13 have four inches of insulation, you  
14 have a half-inch of thermal  
15 protection, and you have an  
16 eighth-inch outer jacket. Sometimes  
17 it was compressed right up against the  
18 shell; other times it was ripped away.  
19 So it was anywhere from zero to  
20 six inches.

21 QUESTIONS BY MR. ELLIS:

22 Q. Okay. Not the same distance  
23 every time. It depended on the circumstances  
24 of the particular measurement you were  
25 taking.

1 Is that correct?

2 A. It depended on what access  
3 point I had to get to the shell of the car.

4 Q. Okay. Could we get Tab 31 up,  
5 please?

6 And this is Exhibit 16 {sic}.  
7 This is the page ending 2559 of Exhibit 6 --

8 VIDEOGRAPHER: 18.

9 MR. ELLIS: This was 18?

10 VIDEOGRAPHER: No. If you're  
11 marking one now --

12 MR. ELLIS: No. No, this is an  
13 exhibit -- this is a previously marked  
14 exhibit. It is Exhibit 16.

15 VIDEOGRAPHER: Okay.

16 MR. ELLIS: And it is the  
17 HAZMAT Group Chair's Factual Report,  
18 and specifically this is page 2559.

19 (Day Exhibit 18 marked for  
20 identification.)

21 QUESTIONS BY MR. ELLIS:

22 Q. Oh, this is Exhibit 19. 18.  
23 Thank you. 18.

24 You've been handed what's been  
25 marked as Exhibit 18, which I'll represent to

1 you is just on the second page an enlarged  
2 version so folks can see the chart a little  
3 easier.

4 Do you have Exhibit 18 in front  
5 of you and the second page with the chart  
6 that is 2559 from Exhibit 16?

7 A. Say it one more time.

8 Q. Do you have Exhibit 18 in front  
9 of you? It's the same as page 2559 on  
10 Exhibit 16.

11 Right?

12 A. Yes, sir.

13 Q. Okay. Do you see on the box on  
14 the left is a series of temperatures that  
15 were taken on the five VCM cars on  
16 February 5th and 6th.

17 Right?

18 A. Okay.

19 Q. Have you ever seen this before?

20 A. No, sir.

21 Q. Okay. Do --

22 A. Or let me rephrase that.

23 Excuse me. I saw it yesterday.

24 Q. Okay. Yesterday was the first  
25 time you saw it?

1           A.           That I remember seeing this.

2                       MR. BRAGA:   Object to the form.

3   QUESTIONS BY MR. ELLIS:

4           Q.           Okay.   Do any of these  
5   temperature readings look familiar to you?

6                       MR. BRAGA:   Object to the form.

7                       THE WITNESS:   They're  
8   temperatures.

9   QUESTIONS BY MR. ELLIS:

10          Q.           Do any of them look like the  
11   ones you took on February 5th of Cars 31 and  
12   30?

13          A.           I do not remember.

14          Q.           Did you ever see, either on  
15   February 5th or February 6th, temperature  
16   measurements other than the ones that you  
17   took?

18          A.           Temperatures were discussed a  
19   few times in passing conversations.

20                       I didn't put a lot of credence  
21   into these temperature readings because they  
22   were taken with IR guns, unknown accuracy.  
23   They might give you a positive.   They might  
24   give you a negative.   It might -- I don't --  
25   I don't trust the readings we were getting.

1                   The way to get a temperature is  
2   to go through the protective housing and get  
3   a core temperature of the product using the  
4   thermometer well.

5           Q.       Okay. My question was, either  
6   on February 5th or February 6th, did you see  
7   temperature readings for any or all of the  
8   five VCM cars?

9           A.       We discussed them.

10          Q.       Did you see any readings?

11                   MR. LEVINE: Objection.

12                   THE WITNESS: We discussed  
13   them.

14   QUESTIONS BY MR. ELLIS:

15          Q.       Okay. My question was, did you  
16   see in writing any readings, either on  
17   February 5th or February 6th?

18          A.       You didn't say that. In  
19   writing, no.

20          Q.       And who did you discuss the  
21   temperature readings with?

22          A.       Drew, Terry, the NS folks.

23                   Drew was concerned, I was  
24   concerned, with the accuracy of the  
25   temperature readings and the inability to get

1 core temperatures.

2 Q. Okay. Why were you taking  
3 readings of Cars 30 and 31?

4 MR. BRAGA: Object to the form.

5 THE WITNESS: It's part of my  
6 job.

7 QUESTIONS BY MR. ELLIS:

8 Q. And specifically what part of  
9 your job is taking temperature readings?

10 MR. LEVINE: Objection.

11 THE WITNESS: We, as in SRS,  
12 only had three folks on-scene at the  
13 time. We had people responding, but  
14 they weren't on-scene yet, so we were  
15 filling in. We were doing all kinds  
16 of things, things that a senior  
17 project manager would do, things that  
18 a senior project manager doesn't  
19 usually do.

20 I'm a hazmatician -- I'm a  
21 HAZMAT technician, HAZMAT operations,  
22 HAZMAT sector chief. I can be all of  
23 these different things. This is what  
24 I do for a living.

25

1 QUESTIONS BY MR. ELLIS:

2 Q. Okay. And one of the things  
3 that you do when you're doing an emergency  
4 response is take temperatures of tanks that  
5 are involved in a fire.

6 Is that right?

7 A. Perform damage assessment.

8 Q. Okay. Part of performing  
9 damage assessment is taking temperature  
10 readings of a tank car?

11 A. Yes, sir.

12 Q. Okay. And you have the IR gun  
13 in your wreck bag because that's the tool you  
14 use to take temperature readings.

15 Right?

16 A. One of them.

17 Q. Okay. It's definitely a tool  
18 that you've used in other wrecks.

19 Right?

20 A. That's correct.

21 Q. And you used it in this wreck.

22 Right?

23 A. Yes, sir.

24 Q. Okay. Did you ever express to  
25 anybody that you thought the temperature



1 readings were unreliable?

2 A. Many times.

3 Q. To who?

4 A. Drew, Terry, the NS folks.

5 Q. Who at NS did you tell

6 temperature readings were unreliable?

7 A. Scott Gould, Scott Deutsch,  
8 possibly Chris Burch, and possibly Robert  
9 Wood and Dave Schoendorfer.

10 Q. Did you tell Mr. Schoendorfer  
11 that you thought the temperature readings  
12 that they were getting on the five VCM cars  
13 were unreliable?

14 A. I did.

15 Q. When did you tell him that?

16 A. I do not remember.

17 Q. Did you tell him that on the  
18 5th?

19 A. I do not remember.

20 Q. Do you remember -- did you tell  
21 him that before the vent and burn?

22 A. Yes.

23 Q. Tell me everything you recall  
24 about your conversation with Mr. Schoendorfer  
25 about temperatures being unreliable,

1 temperature readings being unreliable.

2 MR. LEVINE: Objection.

3 THE WITNESS: I'm not -- I'm  
4 not sure the temperatures are  
5 reliable.

6 QUESTIONS BY MR. ELLIS:

7 Q. You said you weren't sure the  
8 temperatures were reliable.

9 What else did you say?

10 A. I'm not sure that the  
11 temperatures are reliable.

12 Q. What else did you say?

13 A. I'm not sure the temperatures  
14 are reliable.

15 Q. Did you say anything else?

16 A. I do not recall.

17 Q. Okay. What did  
18 Mr. Schoendorfer say to you?

19 A. Please take more temperature  
20 readings.

21 Q. Did you?

22 A. I personally did not.

23 Q. Other than please take more  
24 temperature readings, did he say anything  
25 else about -- after you told him that

1 temperature readings were unreliable?

2 A. No.

3 Q. What about Mr. Wood? Did you  
4 tell Mr. Wood that you thought the  
5 temperature readings you were getting were  
6 unreliable?

7 A. I do not remember.

8 Q. What about Mr. Gould? Did you  
9 tell him that the temperature readings you  
10 were getting were unreliable?

11 A. I believe so.

12 Q. When did you tell him that?

13 A. I do not remember.

14 Q. Do you remember if it was on  
15 February 5th or February 6th?

16 A. It would have been on  
17 February 5th.

18 Q. Do you remember where you were  
19 when you were having that conversation with  
20 Mr. Gould?

21 A. Either in the fire station,  
22 walking across the parking lot going towards  
23 city hall or on-site.

24 Q. And tell me everything that you  
25 said to him and he said to you.

1 MR. LEVINE: Objection.

2 THE WITNESS: I can't do that.

3 QUESTIONS BY MR. ELLIS:

4 Q. What do you remember about that  
5 conversation?

6 A. That specifically they were --  
7 they, as in NS, wanted more data, more  
8 temperature readings. And I said I -- I'm  
9 unsure that the temperatures are reliable.

10 Q. Okay. And what did he say in  
11 response?

12 A. I do not remember.

13 Q. Did you ever send any written  
14 communication to anybody stating your view  
15 that the temperature readings that were being  
16 taken of the five VCM cars on February 5th  
17 and February 6th were unreliable?

18 MR. BRAGA: Object to the form.

19 THE WITNESS: I did not  
20 generate any data, no, sir.

21 QUESTIONS BY MR. ELLIS:

22 Q. And you didn't text anybody  
23 that?

24 A. No, sir.

25 Q. You didn't e-mail anybody that?

1 A. No, sir.

2 Q. Did you ever try to get more  
3 reliable temperature readings?

4 A. The problem you have with a  
5 material that is potentially polymerizing is  
6 you get a buildup of polymer on the inside of  
7 the car. So you could be taking an erroneous  
8 reading because it could almost insulate that  
9 spot or those spots that you're hitting. You  
10 don't know where the polymer is. The polymer  
11 could be all over the inside of the tank.

12 Q. So was the reason you thought  
13 the temperature readings were unreliable  
14 because you thought polymer was inside the  
15 tank and blocking the readings?

16 A. It was possible.

17 Q. Was there any other reason you  
18 thought the readings were unreliable?

19 A. I was concerned that the  
20 reliability of the instruments, contact  
21 thermometers, polymer buildup on the inside  
22 of the car and such.

23 Q. You said contact thermometers.  
24 You weren't using a contact thermometer, were  
25 you?

1           A.       There were contact thermometers  
2   used, and I was concerned with the accuracy  
3   of those, along with the IR guns.

4           Q.       Okay. The IR gun, were you  
5   concerned about the inaccuracy of those  
6   readings, other than the fact that you  
7   thought polymer might be blocking the  
8   reading?

9           A.       That's the reason.

10          Q.       That's the sole reason for the  
11   IR gun.

12                   Is that right?

13          A.       That is a reason, yes.

14          Q.       Were there any other reasons  
15   you were worried about the IR readings?

16          A.       If they were -- if they were --  
17   weren't giving us a true reading.

18          Q.       What about the IR gun made you  
19   concerned about a true reading other than  
20   polymer?

21          A.       Age is part of it. The  
22   accuracy is not spot-on. We needed really  
23   good data and couldn't get it.

24          Q.       The --

25          A.       The only way to get good data

1 is to put a thermometer into the thermometer  
2 well to get a temperature of the core of the  
3 product.

4 Q. Did you ever try to get a  
5 temperature in the well?

6 A. I could not get into the  
7 thermometer well.

8 Q. Did you try?

9 A. No.

10 Q. Could we move on to the next --  
11 I have a video that we're going to show you.  
12 It's tab -- what tab is it?

13 MS. COLLIER: 51.

14 (Day Exhibit 19 marked for  
15 identification.)

16 QUESTIONS BY MR. ELLIS:

17 Q. 51. And we'll mark this video  
18 Exhibit 19.

19 Before we show the video, you  
20 gave some testimony about seeing what you  
21 thought were sparklers after the vent and  
22 burn was initiated that you believed to be  
23 polymer.

24 Correct?

25 A. Yes, sir.

1 Q. Did you tell other people --  
2 let me ask you this.

3 Did you tell anybody at Norfolk  
4 Southern that you saw material that you  
5 believed to be polymer?

6 A. Yes, sir.

7 Q. Who did you tell?

8 A. Pretty much everybody that we  
9 met with after the vent and burn was done.

10 Q. And when you say "pretty much  
11 everyone," who do you mean?

12 A. Mr. Wood, Mr. Deutsch,  
13 Mr. Gould, my crew.

14 Q. Did they ask you whether you  
15 saw polymer, or did you volunteer it?

16 A. I volunteered it.

17 Q. Other than people at Norfolk  
18 Southern, who else did you tell?

19 A. We had discussions with the Oxy  
20 Vinyl folks.

21 Q. On February 6th?

22 A. I don't remember when we talked  
23 to them.

24 Q. On February 6th, did you have  
25 any discussions with anybody other than



1 Norfolk Southern about your views that you  
2 saw polymer when the vent and burn was  
3 initiated?

4 A. There was a lot going on after  
5 the vent and burn operation, so I talked to a  
6 lot of people in the heat of the moment, so I  
7 don't remember.

8 Q. You don't remember one way or  
9 the other.

10 Is that right?

11 A. I don't remember.

12 Q. Could we play the video?

13 (Video played.)

14 Q. When you -- when you see, if  
15 you see -- can we just stop for a second?

16 Sorry, this is not super...

17 My question for you is, if you  
18 see in this video what you believed was  
19 polymer ejecting from the tanks, let us know  
20 and we'll stop.

21 Okay?

22 A. Sure.

23 Q. Okay?

24 A. Okay.

25 Q. Okay. Go ahead and play the

1 video.

2 (Video played.)

3 Q. So far in the video, do you see  
4 anything that you thought was polymer?

5 A. No, sir.

6 Q. You do not?

7 A. No, sir.

8 Q. Okay. You can stop the video  
9 now.

10 MR. BRAGA: Can we put on the  
11 record what timestamp we stopped it  
12 at?

13 MR. ELLIS: Well, let's let it  
14 play all the way through. Apologies.

15 MR. BRAGA: Thank you.

16 (Video played.)

17 QUESTIONS BY MR. ELLIS:

18 Q. While you're looking, when you  
19 saw the polymer, was it at the beginning of  
20 the initiation or at the end?

21 A. The beginning.

22 Q. It was at the beginning.

23 So we would have already passed  
24 it if you had seen it in this video.

25 Is that right?

1           A.       This is on the opposite side  
2   from where I was.

3           Q.       This is on the opposite side  
4   from where you were?

5           A.       Yes, sir.

6           Q.       Okay. But you didn't see it in  
7   this video.

8                   Is that correct?

9           A.       That's correct.

10          Q.       And Tab 49.

11                   VIDEOGRAPHER: It's going to be  
12   Exhibit 20.

13                   MR. ELLIS: Okay. Let's -- we  
14   need to organize exhibits. Can we go  
15   off the record for a minute?

16                   VIDEOGRAPHER: All right. The  
17   time is 5:34 p.m. We're going off the  
18   record.

19                   (Off the record at 5:34 p.m.)

20                   VIDEOGRAPHER: The time is  
21   5:42 p.m., and we're back on the  
22   record.

23                   (Day Exhibit 20 marked for  
24   identification.)  
25

1 QUESTIONS BY MR. ELLIS:

2 Q. Mr. Day, you've been handed  
3 what's been marked as Day Exhibit Number 20.  
4 It's two photographs. One is SRS 000589, and  
5 the other one is 590. These came from  
6 production from your company.

7 Do you recognize those two  
8 photos?

9 A. I do.

10 Q. Were these taken from your  
11 point of view, from where you were standing  
12 when the vent and burn was executed?

13 A. No, sir.

14 Q. Is this -- do you know what  
15 point of view this is?

16 A. Pretty poor pictures.

17 MR. BRAGA: Object to the form.

18 QUESTIONS BY MR. ELLIS:

19 Q. Are these stills from the  
20 drone?

21 A. I can't tell you. I do not  
22 know.

23 Q. Okay. Do you know where these  
24 two --

25 A. These are going to --

1 Q. -- photographs came from?

2 A. These are going to have to be  
3 screenshots from a video.

4 Q. Okay. Do you -- my question  
5 was simply -- they came out of an SRS  
6 production, so my question is, do you know  
7 where they came from?

8 A. No, sir.

9 Q. Okay. Do either of these  
10 pictures depict what you believed were the  
11 sparklers evidencing polymerization at the  
12 time the vent and burn was executed?

13 A. No, sir.

14 Q. Since that day, have you ever  
15 seen any photo or video of the sparklers that  
16 you believed you saw showing polymerization  
17 when the vent and burn was executed?

18 A. No, sir.

19 Q. After the vent and burn, did  
20 you go to the scene to see if there was any  
21 physical evidence of polymerization?

22 A. The fires burned for several --  
23 several hours afterwards, and once it -- I  
24 didn't go back until the next day.

25 Q. Okay. And the next day, did

1     you look for pieces of polymer or any  
2     physical evidence of polymerization?

3             A.       Everything was burned up.

4             Q.       My question simply was, did you  
5     look for physical evidence of polymerization,  
6     including any of the sparklers that you saw?

7             A.       There was no need because  
8     everything was burned up.

9             Q.       Okay. Did anybody tell you  
10    that they saw any physical evidence of  
11    polymerization from any of the VCM cars?

12            A.       No, sir.

13            Q.       And to this day, other than the  
14    time you thought you saw it at the time of  
15    the vent and burn, have you ever seen  
16    evidence of polymerization?

17            A.       Just what's in the bottom of  
18    the cars.

19            Q.       I'm sorry?

20            A.       Just what is in the bottom of  
21    the cars that was photo-documented.

22            Q.       Okay. You saw it in your  
23    photographs.

24                    Have you seen any other  
25    evidence that you believed is evidence of

1 polymerization?

2 A. No, sir.

3 MR. BRAGA: Object to the form.

4 QUESTIONS BY MR. ELLIS:

5 Q. You kind of stepped on your  
6 lawyer.

7 Is the answer no?

8 A. No, sir.

9 MR. BRAGA: He's been stepping  
10 on me all day.

11 QUESTIONS BY MR. ELLIS:

12 Q. We have one more video. We'll  
13 mark this as Exhibit 21.

14 And again, same for this one.  
15 If you see while we're playing this video  
16 what you believe to be the evidence of  
17 polymerization or indication of sparklers  
18 that you've said you saw, let us know and  
19 we'll stop.

20 Okay?

21 Oh, we need to tell Gina?

22 Let's -- let's scrub this.

23 We'll do this one later. We will not mark  
24 Exhibit 21.

25 We were discussing the

1 temperature measurements that you and others  
2 were taking. Other than it being something  
3 that you do when you respond to an emergency,  
4 i.e., take tank temperatures, did you have an  
5 understanding as to any other reason why you  
6 were doing it?

7 MR. BRAGA: Object to the form.

8 THE WITNESS: During the damage  
9 assessment phase of -- during the  
10 damage assessment of the response to  
11 tank cars, there's multiple things  
12 that we do. One is take temperatures.  
13 One is take pressures. One is to  
14 inspect as much of the visible shell  
15 of the car.

16 QUESTIONS BY MR. ELLIS:

17 Q. Okay. So part of the standard  
18 response is to take VCM tank car temperatures  
19 or any flammable gas, pressurized flammable  
20 gas, tank car.

21 Right?

22 MR. BRAGA: Objection.

23 THE WITNESS: Any car that's  
24 involved in fire, we'll take  
25 temperatures.



1 QUESTIONS BY MR. ELLIS:

2 Q. Okay. And when you take  
3 temperatures -- well, let me ask you this.

4 Did you also have an  
5 understanding that Oxy Vinyls wanted  
6 temperatures taken?

7 MR. BRAGA: Object to the form.

8 THE WITNESS: Ask the question  
9 again.

10 QUESTIONS BY MR. ELLIS:

11 Q. Did you have an understanding  
12 either on February 5th or February 6th that  
13 Oxy Vinyls suggested taking temperatures of  
14 the tank cars?

15 A. I believe that is why a  
16 concerted effort was made to take  
17 temperatures.

18 Q. Okay. And did that include  
19 your concerted effort?

20 A. I was one of them that took  
21 temperatures, yes, sir.

22 Q. So one of the reasons you were  
23 taking your temperatures on Cars 30 and 31  
24 was because Oxy Vinyls had said that that was  
25 a way you could determine whether

1 polymerization was occurring.

2 Right?

3 MR. BRAGA: Object to the form.

4 THE WITNESS: The NS asked us  
5 to take temperatures at as many places  
6 as we could on all of the cars.

7 QUESTIONS BY MR. ELLIS:

8 Q. And the NS asked you to take  
9 those temperatures, in part, because Oxy  
10 Vinyls wanted them.

11 Right?

12 MR. LEVINE: Objection.

13 MR. BRAGA: Object to the form.

14 THE WITNESS: That would be a  
15 question for NS folks.

16 QUESTIONS BY MR. ELLIS:

17 Q. My question is, did you have an  
18 understanding as to why you were doing it?

19 A. My understanding --

20 MR. LEVINE: Objection.

21 THE WITNESS: -- was my  
22 customer asked for temperatures to be  
23 taken, and that was done.

24 QUESTIONS BY MR. ELLIS:

25 Q. Did you have any understanding

1     that that was at Oxy Vinyls' request?

2                     MR. LEVINE:   Objection.

3                     THE WITNESS:   We were working  
4                     for the Norfolk Southern, and they  
5                     asked us to take temperatures.

6     QUESTIONS BY MR. ELLIS:

7             Q.       My question was different.

8                     My question was, excuse me, did  
9     you have an understanding that Norfolk  
10    Southern wanted it because Oxy Vinyls had  
11    asked?

12            A.       That would be --

13                     MR. LEVINE:   Objection.

14                     MR. BRAGA:    Objection.

15                     THE WITNESS:   That would be a  
16                     question for the Norfolk Southern.

17    QUESTIONS BY MR. ELLIS:

18            Q.       I understand.

19                     My question was your  
20    understanding. Did you have that  
21    understanding?

22                     MR. LEVINE:   Objection.

23                     THE WITNESS:   My customer asked  
24                     me to perform -- or asked us as a  
25                     group to perform air monitoring -- or,

1           excuse me, temperature of the cars.

2                   (Day Exhibit 21 marked for  
3           identification.)

4   QUESTIONS BY MR. ELLIS:

5           Q.       We now have that video, so we  
6   will mark that as Exhibit 21. Excuse me.  
7   Same instructions. If you see what you  
8   believed are the sparklers or evidence of  
9   polymerization, let us know.

10                   (Video played.)

11           Q.       And I think as we discussed  
12   before, what you saw was at the beginning, so  
13   if you would have seen it, you would have  
14   seen it by now.

15                   Right?

16           A.       So these two pictures are a  
17   screenshot of that video, and I was on the  
18   opposite side of the derailment.

19           Q.       Okay. This video, this was a  
20   video you sent around to colleagues and other  
21   folks you knew right after the vent and burn.

22                   Right?

23           A.       If this is the Channel 8 News  
24   video, yes.

25           Q.       Okay. Did you take any video

1     yourself of the vent and burn?

2             A.       I did not.

3             Q.       Okay. And I think you answered  
4     this, but nobody told you that they saw  
5     physical evidence of polymerization at the  
6     time of the vent and burn.

7                     Right?

8             MR. BRAGA: Object.

9             THE WITNESS: Ask that question  
10    again.

11    QUESTIONS BY MR. ELLIS:

12            Q.       Nobody told you that they saw  
13    physical evidence of polymerization at the  
14    time of the vent and burn?

15            A.       No, sir.

16            Q.       The temperatures that were  
17    being taken, did you -- the temperature  
18    readings on the VCM cars that were being  
19    taken, did you ever learn the results of  
20    those on the 5th or 6th of February?

21            A.       Excuse me? I don't -- I don't  
22    understand your question.

23            Q.       Well, you took two temperature  
24    measurements, and then other folks at either  
25    SRS or SPSI took temperature measurements on

1 the five VCM cars.

2 Right?

3 A. Correct.

4 Q. Okay. And did you, on the 5th  
5 or 6th of February, learn the results of  
6 those measurements?

7 A. It's -- all the measurements  
8 are in these documents.

9 Q. I get that.  
10 Some of the documents you only  
11 saw for the first time yesterday.

12 Right?

13 A. Correct.

14 Q. Okay. My question was, on the  
15 5th or the 6th, did you personally learn the  
16 results of those temperature readings?

17 A. I heard temperatures --

18 MR. BRAGA: What's that noise?

19 THE WITNESS: Somebody is  
20 outside yelling.

21 MR. LEVINE: It's outside.

22 MR. BRAGA: Oh, okay. Future  
23 client.

24 Sorry, go ahead.

25 MR. ELLIS: They're protesting

1           you, is what I was going to say.

2           MR. BRAGA: Yeah.

3       QUESTIONS BY MR. ELLIS:

4           Q.       Did you learn the results of  
5       those temperature readings?

6           A.       I heard some numbers, yes.

7           Q.       What numbers did you hear?

8           A.       130s.

9           Q.       You heard 130s.  
10                   Was it with respect to a  
11       specific VCM car?

12          A.       No, sir.

13          Q.       Did you have an understanding  
14       as to which VCM car was getting 130  
15       temperature readings?

16          A.       There was discussion, and I'd  
17       learned afterwards during the NTSB hearing  
18       that they were the Car 55. I'd have to refer  
19       back to one of these exhibits where the cars  
20       are. 54, 55.

21                   MR. BRAGA: You want to look  
22       back at 13?

23                   THE WITNESS: 55.

24       QUESTIONS BY MR. ELLIS:

25          Q.       Okay. But that's something you

1 learned after the fact.

2 Is that right?

3 A. Correct. Correct.

4 Q. You yourself never learned  
5 which specific VCM car was getting a 130  
6 reading.

7 Is that correct?

8 A. I believe so, yes.

9 Q. And you never learned when that  
10 reading occurred or whether it was higher or  
11 lower.

12 Is that correct?

13 A. Correct.

14 Q. What about -- did you learn  
15 whether it was all five VCM cars that had 130  
16 or whether it was just one at the time,  
17 either on the 5th or the 6th of February?

18 A. I didn't put a lot of emphasis  
19 on the temperatures that they were -- that  
20 people were getting, receiving. I heard on  
21 the radio 60s, 70s. I heard that  
22 information.

23 I didn't put a lot of credence  
24 in it because of the concern that we had  
25 polymerization going on, and it -- the



1 readings could be wrong.

2 Q. Okay. So am I right then that  
3 your decision to execute a vent and burn on  
4 all five VCM cars didn't involve the  
5 temperature readings at all?

6 MR. LEVINE: Objection.

7 MR. BRAGA: Objection to the  
8 form.

9 THE WITNESS: A, I didn't make  
10 the decision to vent and burn. I was  
11 part of a group that recommended to  
12 the NS to take to the incident  
13 commander to vent and burn those five  
14 cars.

15 QUESTIONS BY MR. ELLIS:

16 Q. You told folks it was the  
17 toughest decision you ever made.

18 Didn't you?

19 A. I did.

20 Q. Okay. And when you were making  
21 a decision, did you consider temperatures or  
22 not?

23 A. I considered a lot of things.

24 Q. Did you consider temperatures?

25 A. I didn't put a lot of credence

1 in the temperatures, no.

2 Q. Did you consider the  
3 temperatures at all?

4 A. I don't remember.

5 Q. You don't remember whether you  
6 considered temperatures at all.

7 Is that your testimony?

8 A. That is my testimony.

9 Q. In your training, in the  
10 seminars that you've been in, when you're  
11 measuring a VCM tank car temperature as part  
12 of your damage assessment, is there a  
13 recommendation as to where on the car you  
14 should shoot the temperature?

15 MR. BRAGA: Objection.

16 THE WITNESS: The shell.

17 QUESTIONS BY MR. ELLIS:

18 Q. On the shell.

19 Any particular place of the  
20 shell?

21 A. The shell.

22 Q. My question was, in your  
23 trainings, in the manuals you rely on, is  
24 there any recommendation as to where on the  
25 shell you should shoot the temperature?

1 MR. BRAGA: Objection.

2 THE WITNESS: On the shell, in  
3 the liquid phase.

4 QUESTIONS BY MR. ELLIS:

5 Q. On the shell, in the liquid  
6 phase.

7 How do you make that  
8 determination?

9 A. Hope and prayer.

10 Q. Okay. Other than on the shell,  
11 in the liquid phase, in your trainings, in  
12 the literature that you rely on as part of  
13 your damage assessment in a VCM tank car  
14 emergency response, is there any more  
15 specific place that you're instructed to take  
16 the temp -- shoot the temperature?

17 MR. BRAGA: Objection.

18 THE WITNESS: Shoot the  
19 temperature, no.

20 The easy -- the best way to get  
21 a core temperature is to put  
22 thermometer -- the thermometer into  
23 the thermometer well.

24 QUESTIONS BY MR. ELLIS:

25 Q. Okay. And if you're using an

1 IR camera or an IR gun, is there any specific  
2 recommended place to shoot that temperature?

3 A. On the shell.

4 Q. Just anywhere on the shell?

5 A. On the shell.

6 Q. Anywhere on the shell?

7 A. On the shell.

8 Q. My question was, is it  
9 anywhere? Is anywhere on the shell an  
10 acceptable place in your view?

11 A. As long as it's on the shell.

12 Q. Okay. Is there any specific  
13 manner of IR temperature measurement device,  
14 either a camera or a gun, that is the  
15 preferred way if you can't measure in the  
16 well?

17 MR. BRAGA: Objection.

18 THE WITNESS: The more  
19 sophisticated the equipment, obviously  
20 the better the readings are. There  
21 are some -- there are some equipment  
22 out there that can read through  
23 jacket, but they're few and far  
24 between. They're not readily  
25 available.

1 QUESTIONS BY MR. ELLIS:

2 Q. And --

3 A. It takes --

4 Q. -- does SRS have any of those?

5 A. -- to be able to operate that  
6 gun. And a lot of times the folks that come  
7 in to operate those guns are not qualified to  
8 be on a hazardous waste site, even under  
9 emergency conditions.

10 Q. Does SRS have access to that  
11 sophisticated equipment?

12 A. We have access through  
13 subcontractors.

14 Q. Okay. Did you use it here?

15 A. No, sir.

16 Q. Why not?

17 A. Didn't -- it was not available.

18 Q. Did you try and check to see if  
19 it was available?

20 A. I personally did not.

21 Q. Who did?

22 A. I can't tell you that.

23 Q. Do you know of anybody checking  
24 to see if the sophisticated measuring  
25 equipment that's available to SRS was

1 available for this particular incident?

2 A. I did not ask.

3 MR. BRAGA: Objection.

4 QUESTIONS BY MR. ELLIS:

5 Q. Did you personally witness all  
6 five tank car PRDs actuate?

7 A. I -- no, I saw video of one.

8 Q. Okay. Did you personally  
9 witness any of the PRDs actuate on any of the  
10 VCM cars?

11 A. No, sir.

12 Q. And you saw video of one. That  
13 was the video that you were sent when you  
14 were first called in after you reached out to  
15 Mr. Schoendorfer.

16 Right?

17 A. That's correct.

18 Q. And you sent that to your  
19 colleagues, and that was the PRD that  
20 actuated for what folks on-scene estimated to  
21 be 70 minutes.

22 Correct?

23 A. That's correct.

24 Q. While you were on-scene, none  
25 of the PRDs activated.

1 Right? Actuated?

2 A. That is correct.

3 MR. BRAGA: Object to the form.

4 MR. ELLIS: I think we're at a  
5 good stopping point. I think we've  
6 used almost all of our time, so that's  
7 all I have for you right now.

8 VIDEOGRAPHER: Any other  
9 statements for the record?

10 Okay. The time is 5:58 p.m. on  
11 January 16, 2024. We're going off the  
12 record, completing today's  
13 video-recorded session.

14 (Deposition concluded at 5:58 p.m.)

15 - - - - -

16

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Confidential Pursuant to Protective Order

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CERTIFICATE

I, CARRIE A. CAMPBELL, Registered  
Diplomate Reporter, Certified Realtime  
Reporter and Certified Shorthand Reporter, do  
hereby certify that prior to the commencement  
of the examination, Charles Day, was duly  
sworn by me to testify to the truth, the  
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the  
foregoing is a verbatim transcript of the  
testimony as taken stenographically by and  
before me at the time, place and on the date  
hereinbefore set forth, to the best of my  
ability.

I DO FURTHER CERTIFY that I am  
neither a relative nor employee nor attorney  
nor counsel of any of the parties to this  
action, and that I am neither a relative nor  
employee of such attorney or counsel, and  
that I am not financially interested in the  
action.

---

CARRIE A. CAMPBELL,  
NCRA Registered Diplomate Reporter  
Certified Realtime Reporter  
California Certified Shorthand  
Reporter #13921  
Missouri Certified Court Reporter #859  
Illinois Certified Shorthand Reporter  
#084-004229  
Texas Certified Shorthand Reporter #9328  
Kansas Certified Court Reporter #1715  
New Jersey Certified Court Reporter  
#30XI00242600  
Louisiana Certified Court Reporter  
#2021012  
Notary Public  
Dated: January 18, 2024



1 INSTRUCTIONS TO WITNESS

2 DATE: January 18, 2024

3 Please read your deposition over  
4 carefully and make any necessary corrections.  
5 You should state the reason in the  
6 appropriate space on the errata sheet for any  
7 corrections that are made.

8 After doing so, please sign the  
9 errata sheet and date it. You are signing  
10 same subject to the changes you have noted on  
11 the errata sheet, which will be attached to  
12 your deposition.

13 It is imperative that you return  
14 the original errata sheet to the deposing  
15 attorney within thirty (30) days of receipt  
16 of the deposition transcript by you. If you  
17 fail to do so, the deposition transcript may  
18 be deemed to be accurate and may be used in  
19 court.

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ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do  
hereby certify that I have read the foregoing  
pages and that the same is a correct  
transcription of the answers given by me to  
the questions therein propounded, except for  
the corrections or changes in form or  
substance, if any, noted in the attached  
Errata Sheet.

\_\_\_\_\_  
Charles Day

\_\_\_\_\_  
DATE

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

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CHARLES DAY  
  
\_\_\_\_\_ day of \_\_\_\_\_, 2024.  
  
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Notary Public

Confidential Pursuant to Protective Order

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